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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 37

[Doc. # AMS–LPS–15–0054]

Removal of Program To Assess Organic Certifying Agencies in 7 CFR Part 37

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Direct final rule.

SUMMARY: This final rule informs the public that the Agricultural Marketing Service (AMS) of the United States Department of Agriculture (USDA) is removing the Program to Assess Organic Certifying Agencies from the Code of Federal Regulations. This action removes unnecessary regulations from the CFR. Since the publication of the organic regulations, the Program to Assess Organic Certifying Agencies is no longer applicable or necessary.

DATES: This rule is effective November 7, 2016 without further action, unless adverse comment is received by September 8, 2016. If adverse comment is received, AMS will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Comments should be submitted online at *www.regulations.gov*. Comments received will be posted without change, including any personal information provided. All comments should reference the docket number AMS–LPS–15–0054, the date of submission, and the page number of this issue of the **Federal Register**. Comments may also be submitted to: Jeffrey Waite, Branch Chief, Auditing Services Branch, Quality Assessment Division; Livestock, Poultry, and Seed Program, Agricultural Marketing Service, U.S. Department of Agriculture, 400 Independence Avenue SW., Room 3932–S, STOP 0258, 1400 Independence Avenue SW., Washington, DC 20250–0258. Comments will be made available for public inspection at the above address during regular business hours or online at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Jeffrey Waite, Branch Chief, Auditing Services Branch, Quality Assessment Division; Livestock, Poultry, and Seed Program, Agricultural Marketing Service, U.S. Department of Agriculture, Room 3932–S, STOP 0258, 1400 Independence Avenue SW., Washington, DC 20250–0258; telephone (202) 720–4411, or email *Jeffrey.Waite@ams.usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule has been determined not to be significant for purposes of Executive Order 12866 or Executive Order 13563. Accordingly, the Office of Management and Budget (OMB) has waived the review process.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation does not have tribal implications, in that it would not have substantial direct effects on Tribal governments.

Regulatory Flexibility Act

The purpose of the Regulatory Flexibility Act (RFA) [5 U.S.C. 601–612] is to fit regulatory actions to the scale of businesses subject to such actions so small businesses will not be unduly or disproportionately burdened. AMS has determined that this rule will not have a significant impact on a substantial number of small entities, as defined by RFA, because the services are voluntary and provided on a fee-for-service basis, and are not subject to scalability based on the business size. Moreover, there are no entities being provided services under this part.

AMS is committed to complying with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. chapter 35], it has been determined that this rule will not change the information collection and recordkeeping requirements previously approved, and will not impose additional reporting or recordkeeping burden on users.

The information collection and recordkeeping requirements of this part were approved by OMB under 44 U.S.C. chapter 35 and assigned OMB Control Number 0581–0183. The information collection was retired by OMB on its expiration date of April 30, 2003. A change of worksheet was submitted to OMB on February 21, 2003, to terminate that collection because form LS–314 Application for Service was obsolete. Form LS–313 Application for Service and the ISO 65 Guidelines were transferred to OMB Control Number 0581–0191 for the National Organic Program (NOP). As a result, no information collection under 7 CFR part 37 remained.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. There are no civil justice implications associated with this direct final rule.

Civil Rights Review

AMS has considered the potential civil rights implications of this rule on minorities, women, or persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or

protected genetic information. This rule does not require affected entities to relocate or alter their operations in ways that could adversely affect such persons or groups. Further, this rule will not deny any persons or groups the benefits of a program or subject any persons or groups to discrimination.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, Federalism, which directs agencies to construe, in regulations and otherwise, a Federal statute to preempt state law only when the statute contains an express preemption provision. There are no federalism implications associated with this rule.

Background

The Program to Assess Organic Certifying Agencies was published through a **Federal Register** Interim Final Notice (64 FR 30867) on June 9, 1999, under the authority of the Agricultural Marketing Act of 1946 [7 U.S.C. 1621–1627]. It authorized AMS to assess certifying agencies to the International Organization for Standardization/ International Electrotechnical Commission (ISO/IEC) Guide 65:1996 General requirements for bodies operating product certification systems. While the Organic Foods Production Act of 1990 had been signed into law, AMS had not yet promulgated regulations to establish the NOP. In their absence, the Program to Assess Organic Certifying Agencies provided AMS the legal framework to assess organic certifying agencies. However, when AMS published the national standards for organic products on December 21, 2000, no action was taken to remove 7 CFR part 37. The publication of the NOP Final Rule (7 CFR part 205) nullified the Program to Assess Organic Certifying Agencies.

List of Subjects in 7 CFR Part 37

Administrative practice and procedure, Agriculture, Assessment of organic certifying agencies, Incorporation by reference, Organically produced agricultural commodities, Reporting and recordkeeping requirements.

Accordingly, under the authority 7 U.S.C. 1621–1627, and as discussed in the preamble, the Agency is amending 7 CFR chapter 1 by removing part 37.

PART 37—[REMOVED]

■ 1. Remove part 37.

Dated: July 29, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–18436 Filed 8–8–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket No. FCIC–15–0002]

RIN 0563–AC48

Common Crop Insurance Regulations; Texas Citrus Fruit Crop Insurance Provisions; Correction

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correcting amendment.

SUMMARY: This document contains corrections to the final regulation which was published June 13, 2016 (81 FR 38061–38067). The regulation, as here pertinent, related to the insurance of Texas Citrus Fruit.

DATES: This rule is effective August 9, 2016.

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of this correction revised the Common Crop Insurance Regulations, Texas Citrus Fruit Crop Insurance Provisions published June 13, 2016, (81 FR 38061–38067).

Need for Correction

As published, the final regulation contains sections where text was inadvertently removed that may prove to be misleading and needs to be corrected. In section 1, the definition of production guarantee (per acre) needs to be corrected to add section (a). Additionally, in paragraph 7(a)(4), the term "the" was inadvertently repeated following the phrase "That has produced an average yield of at least three tons per acre."

List of Subjects in 7 CFR Part 457

Crop insurance, Texas citrus fruit, Reporting and recordkeeping requirements, Correction of publication.

Accordingly, 7 CFR part 457 is corrected by making the following correcting amendments:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

■ 2. Amend § 457.119 as follows:

■ a. In section 1. Definitions, by revising the definition of "Production guarantee (per acre)"; and

■ b. In section 7(a)(4), by removing the term "the" following the phrase "That has produced an average yield of at least three tons per acre".

The addition reads as follows:

§ 457.119 Texas citrus fruit crop insurance provisions.

* * * * *

1. Definitions

* * * * *

Production guarantee (per acre). In lieu of the definition contained in section 1 of the Basic Provisions, the production guarantee will be determined by stage as follows:

(a) First stage production guarantee—The second stage production guarantee multiplied by forty percent (40%).

(b) Second stage production guarantee. The quantity of citrus (in tons) determined by multiplying the yield determined in accordance with section 3(e) of these Crop Provisions by the coverage level percentage you elect.

* * * * *

Signed in Washington, DC, on August 2, 2016.

Timothy J. Gannon,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 2016–18748 Filed 8–8–16; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations, Basic Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correcting amendment.

SUMMARY: This document contains a correction to the link in the definition of "limited resource farmer" that is currently provided in the CFR.

DATES: *Effective Date:* August 9, 2016.

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Director, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Background

This correction is being published to correct the link that is no longer valid provided in the definition of "limited resource farmer."

List of Subjects in 7 CFR Part 457

Administrative practice and procedure, Crop insurance, Reporting and recordkeeping requirements.

Need for Correction

As currently published, 7 CFR 457.8 contains an outdated link in the definition of "limited resource farmer." Accordingly, 7 CFR part 457 is corrected by making the following amendment:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(o).

■ 2. Amend § 457.8, in the Common Crop Insurance Policy, as follows:

■ a. In section 1. Definitions, by revising the definition of "Limited resource farmer".

§ 457.8 The application and policy.

* * * * *

Common Crop Insurance Policy

* * * * *

1. Definitions

* * * * *

Limited resource farmer. Has the same meaning as the term defined by USDA at *http://lrftool.sc.egov.usda.gov/LRP_Definition.aspx* or successor Web site.

* * * * *

Signed in Washington, DC, on July 29, 2016.

Timothy J. Gannon,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 2016–18751 Filed 8–8–16; 8:45 am]

BILLING CODE 3410–08–P

CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1911

Special Procedures for Discretionary Access to Classified Historical Central Intelligence Agency Records Requested by Other Federal Agencies in Furtherance of Historical Research

AGENCY: Central Intelligence Agency.

ACTION: Final rule.

SUMMARY: Consistent with the National Security Act of 1947, as amended, the Central Intelligence Agency Act of 1949, as amended, and Executive Order 13526, as amended (or successor Orders), and section 1.6 of Executive Order 12333, as amended (or successor Orders), CIA is providing greater clarity about the procedures under which, as a matter of discretion, it may provide access to classified historical CIA records requested by other Federal agencies in furtherance of historical research when such access is not expressly required by statute. This rule is being issued as a final rule without prior notice of proposed rulemaking as allowed by the Administrative Procedure Act for rules of agency procedure and interpretation.

DATES: Effective August 9, 2016.

FOR FURTHER INFORMATION CONTACT: Joseph W. Lambert, (703) 613–1379.

SUPPLEMENTARY INFORMATION: Consistent with the National Security Act of 1947, as amended, the Central Intelligence Agency Act of 1949, as amended, Executive Order 13526, as amended (or successor Orders), and section 1.6 of Executive Order 12333, as amended (or successor Orders), the CIA has revised its regulations to more clearly set forth the procedures used to provide, as a matter of discretion, access to classified historical CIA records requested by other Federal agencies in furtherance of historical research and when such access is not expressly required by statute. This rule is being issued as a final rule without prior notice of proposed rulemaking as allowed by the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A) for rules of agency procedure and interpretation.

List of Subjects in 32 CFR Part 1911

Archives and records, Classified information, Historical records.

Accordingly, the CIA is adding a new 32 CFR part 1911 to read as follows:

PART 1911—SPECIAL PROCEDURES FOR DISCRETIONARY ACCESS TO CLASSIFIED HISTORICAL CENTRAL INTELLIGENCE AGENCY RECORDS REQUESTED BY OTHER FEDERAL AGENCIES

Sec.

1911.1 Authority and purpose.
1911.2 Definitions.
1911.3 Applicability.
1911.4 Federal agency requests for access and processing procedures.

Authority: 50 U.S.C. 3001 *et seq.;* 50 U.S.C. 3141 *et seq.;* Executive Order 13526, 75 FR 707, 3 CFR 2010 Comp., p. 298–327, (or successor Orders); Executive Order 12333, 40 FR 235, 3 CFR 1981 Comp., p. 200 (or successor Orders).

§ 1911.1 Authority and purpose.

(a) *Authority.* This part is issued under the authority of the National Security Act of 1947, as amended, the Central Intelligence Agency Act of 1949, as amended, Executive Order 13526 (or successor Orders), and section 1.6 of Executive Order 12333, as amended (or successor Orders).

(b) *Purpose.* This part prescribes procedures for providing, as a matter of discretion, appropriately cleared staff and contractor personnel of other Federal agencies with access to classified historical CIA records that their agency has requested when such access is not expressly required by statute.

§ 1911.2 Definitions.

As used in this part:

Agency Release Panel (ARP) means the CIA Agency Release Panel set forth in part 1900 of this chapter.

CIA means the United States Central Intelligence Agency.

Control means ownership or the authority of the CIA pursuant to Federal statute or privilege to regulate official or public access to records.

Federal agency means any executive department, military department or other establishment or entity included in the definition of agency in 5 U.S.C. 552(f).

Information means any knowledge that can be communicated or documentary material, regardless of its physical form that is owned by, produced by or for, or is under the control of the United States Government.

Interested party means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or under U.S. Government contract who, in the sole discretion of the CIA, has a subject matter or physical interest in the documents or information at issue.

Records mean records as defined by 44 U.S.C. 3301.

§ 1911.3 Applicability.

This part does not apply to requests for access to current information or finished intelligence that is routinely disseminated to other Federal agencies in support of the CIA's intelligence, counterintelligence, or special activities responsibilities, or for administrative purposes. This part applies to special requests for access to classified historical CIA records in furtherance of historical research and not expressly required by statute that fall outside of the regular channels and procedures that CIA has already established to provide information to U.S. Government customers. Examples include, but are not limited to, a Federal agency, including a branch of the military, conducting research in preparation for the production of a set of historical studies, an official agency history, or a review of past military activities, that require access to classified historical CIA records.

§ 1911.4 Federal agency requests for access and processing procedures.

(a) *Federal agency requests.* Cleared staff and contractor personnel, working for a Federal agency, and seeking access to classified CIA historical records in an official capacity, shall send the request to the CIA Information and Privacy Coordinator (Coordinator) identifying the particular records needed, the purpose for which the records are needed, whether declassification of the information contained in the records will be required, and the position and security clearances or security approvals held by the requester.

(b) *Special procedures.* The Coordinator shall review the request and solicit input from the Director of the Center for the Study of Intelligence and other interested parties concerning whether or not the required determinations set forth in paragraph (c) of this section can be made. After considering any input received, the Coordinator will either make or not make the determinations set forth in paragraph (c), in consultation with the ARP, and forward the request and the Coordinator's recommendation to the Chief, Information Review and Release Group (IRRG), Information Management Services for decision on whether or not to provide the access requested. A negative determination by the Chief of IRRG shall be reviewed by the Director, Information Management Services, who shall issue the final CIA decision whether or not to grant the request for access.

(c) *Determinations.* As a condition precedent for access, the Coordinator must make all of the following determinations with respect to each request:

(1) That the requester is a current staff employee or contractor of the U.S. Government;

(2) That the requester is currently cleared, or security approved, for access to classified information and that the specific clearance or security approval and access levels of that individual has been officially recorded;

(3) That the scope of the request for information is clearly delineated;

(4) That the information requested is reasonably accessible and can be located and compiled with a reasonable effort;

(5) That a nondisclosure agreement with a prepublication review clause has been executed by the requester;

(6) That all notes and any resulting document will be appropriately safeguarded, that further access will be appropriately limited, and that no further dissemination of information such as that marked ORCON (Dissemination and Extraction of Information Controlled by Originator) or HUMINT (Human Intelligence) shall be made beyond the requesting agency unless CIA permission is obtained;

(7) That if the resulting document containing CIA information or equities is intended to be declassified, the document will be submitted to the Coordinator for declassification review;

(8) That the information and documents will remain classified until a final declassification review and release decision is made by CIA; and,

(9) That the request for access is an official agency request, made in the requester's official capacity on behalf of the requester's agency.

(d) *Limitations.* (1) With respect to requests for access to CIA information and equities residing outside of CIA, upon a favorable CIA determination in accordance with paragraph (c) of this section, the CIA will notify both the requester and the agency holding the records with CIA equities. The requester will need to follow the access requirements of the agency holding the records in addition to any access requirements mandated by CIA.

(2) If access to classified historical CIA records is granted, as a rule, such access shall be provided on CIA premises only. No copies of any classified historical CIA records shall be provided to the requester for reference and use on requester premises without the express approval of the Director, Information Management Services. In exceptional cases, if the provision of classified CIA historical records to the requester for reference and use on requester premises is permitted, the classified CIA historical records provided shall not be disclosed or disseminated beyond the requesting agency, and shall be returned to CIA or destroyed when use of the records has ended. Similarly, any notes taken that are derived from classified historical CIA records that have been accessed in accordance with this part shall not be disclosed or disseminated beyond the requesting agency.

Dated: June 10, 2016.

Joseph W. Lambert,

Director, Information Management Services.

[FR Doc. 2016–15896 Filed 8–8–16; 8:45 am]

BILLING CODE 6310–02–P

Proposed Rules

Federal Register
Vol. 81, No. 153
Tuesday, August 9, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2016–0052]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/U.S. Immigration and Customs Enforcement–015 LeadTrac System of Records

AGENCY: Department of Homeland Security (DHS), Privacy Office.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is giving concurrent notice of a newly established system of records pursuant to the Privacy Act of 1974 for the "Department of Homeland Security/U.S. Immigration and Customs Enforcement–015 LeadTrac System of Records" and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: Comments must be received on or before September 9, 2016.

ADDRESSES: You may submit comments, identified by docket number DHS–2016–0052, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Jonathan Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Amber Smith, Privacy Officer, (202–732–3300), U.S. Immigration and Customs Enforcement, 500 12th Street SW., Mail Stop 5004, Washington, DC 20536, email: *ICEPrivacy@dhs.gov,* or Jonathan R. Cantor (202–343–1717), Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Homeland Security (DHS) is giving concurrent notice of a newly established system of records pursuant to the Privacy Act of 1974 for the "DHS/U.S. Immigration and Customs Enforcement (ICE)–015 LeadTrac System of Records" and this proposed rule. In this rulemaking, the Department proposes to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

The LeadTrac System of Records describes the operation of an ICE information technology system of the same name, which is owned by ICE's Homeland Security Investigations (HSI) directorate. This system contains a repository of data that is ingested on a routine or *ad hoc* basis from other existing sources, and an index created from that data. LeadTrac incorporates tools that allow the data to be queried, analyzed, and presented in a variety of formats that can help illuminate relationships among the various data elements. The purpose of LeadTrac is to help ICE HSI personnel conduct research and analysis using advanced analytic tools in support of their law enforcement mission.

LeadTrac Overview

This record system allows DHS to collect and maintain information about foreign students, exchange visitors, and other non-immigrant visitors to the United Sates who overstay their period of admission or otherwise violate the terms of their visa, immigrant, or non-immigrant status (collectively, status violators), and associated organizations and individuals. Using LeadTrac, the Counterterrorism and Criminal Exploitation Unit (CTCEU) collects personally identifiable information (PII) from key Department of Homeland Security (DHS) databases and analyzes it to identify individuals who are suspected status violators. The Counterterrorism and Criminal Exploitation Unit will also use LeadTrac to collect information about organizations such as schools, universities, and exchange visitor programs being investigated by CTCEU, as well as information about individuals, including designated school officials (DSOs) and associates of suspected status violators.

ICE collects information in LeadTrac about suspected status violators and organizations to help enforce compliance with U.S. immigration laws. Specifically, the information is collected and used to support the following DHS activities: Investigating and determining immigration status and criminal history information of individuals; carrying out the appropriate enforcement activity required; identifying fraudulent schools and/or organizations and the people affiliated with the school or organization; providing HSI and ICE Enforcement and Removal Operations (ERO) with viable lead information to further investigate suspected status violators; and carrying out the required enforcement activity.

The CTCEU and Overstay Analysis Unit (OAU) personnel query a variety of DHS and non-DHS information systems and enter the results into LeadTrac to build a unified picture of an individual's entry/exit, visa, criminal and immigration history, and will comparably process information about associated individuals and organizations. Using this assembled information, CTCEU will determine which individuals or organizations warrant additional investigation for possible status violations or the operation of fraudulent institutions, and will request that the appropriate HSI field offices initiate investigations. Some of the individuals about whom ICE collects information in LeadTrac, such as DSOs and associates of suspected status violators, may have lawful permanent resident (LPR) status or be U.S. citizens.

Consistent with the Department's information sharing mission, information stored in the DHS/ICE–015

LeadTrac System of Records may be shared with other DHS components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS/ICE information may be shared with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in the system of records notice and as otherwise authorized under the Privacy Act.

This newly established system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

The Privacy Act allows Government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, it must issue a rule to make clear to the public the reasons why a particular exemption is claimed, and provide an opportunity to comment.

DHS is claiming exemptions from certain requirements of the Privacy Act for DHS/ICE–015 LeadTrac System of Records. Some information in this system of records relates to official DHS national security, law enforcement, and immigration activities. These exemptions are needed to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these processes; to avoid disclosure of activity techniques; to protect the identities and physical safety of confidential informants and law enforcement personnel; to ensure DHS's ability to obtain information from third parties and other sources; and to protect the privacy of third parties. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

In appropriate circumstances, when compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case-by-case basis.

A system of records notice for DHS/ICE–015 LeadTrac System of Records is also published in this issue of the **Federal Register**.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS proposes to amend chapter I of title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for part 5 continues to read as follows:

Authority: Pub. L. 107–296, 116 Stat. 2135; (6 U.S.C. 101 *et seq.*); 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add paragraph 74 to Appendix C to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

74. The DHS/ICE–015 LeadTrac System of Records consists of electronic and paper records and will be used by ICE investigative and homeland security personnel. The DHS/ICE–015 LeadTrac System of Records contains aggregated data from ICE and DHS law enforcement and homeland security IT systems, as well as data uploaded by ICE personnel for analysis from various public, private, and commercial sources during the course of an investigation or analytical project. This information may include some or all of the following types of personally identifiable information: Identifying and biographic data such as name and date of birth; citizenship and immigration data; border crossing data; customs import-export history; criminal history; contact information; criminal associates; family relationships; photographs and other media; and employment and education information. The records also include tips received by ICE from the public concerning suspicious or potentially illegal activity, as well as telephone call detail records, which contain call transactions and subscriber data, obtained via lawful process during the course of an investigation. This information is maintained by ICE for analytical and investigative purposes and is made accessible to ICE personnel via the LeadTrac system interface. The system is used to conduct research supporting the production of law enforcement activities; provide lead information for investigative inquiry and follow-up; assist in the conduct of ICE criminal and administrative investigations; assist in the disruption of terrorist or other criminal activity; and discover previously unknown connections among existing ICE investigations.

The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(j)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3), (c)(4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8); (f); and (g). Additionally, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3), (c)(4); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). When a record received from another system has been exempted in that source system under 5 U.S.C. 552a(j)(2) or (k)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions set forth here.

Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process. Disclosure of corrections or notations of dispute may impede investigations by requiring DHS to inform each witness or individual contacted during the investigation of each correction or notation pertaining to information provided them during the investigation.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose classified and

other security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of the investigation, thereby interfering with that investigation and related law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information could impede law enforcement by compromising the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(f) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with subsection (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g)(1) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: August 3, 2016.

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2016–18812 Filed 8–8–16; 8:45 am]

BILLING CODE 9111–28–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 115 and 120

RIN 3245–AF85

Miscellaneous Amendments to Business Loan Programs and Surety Bond Guarantee Program

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) continues to review the regulations governing the delivery and oversight of its business lending programs. SBA is proposing changes to some of these regulations for clarity and to increase participation in: The Surety Bond Guarantee (SBG) Program, the 7(a) Loan Program, the Microloan Program, and the Development Company Loan Program (504 Loan Program). In addition, the proposed changes will streamline the regulations by removing or revising any outdated regulations.

DATES: SBA must receive comments to the proposed rule on or before October 11, 2016.

ADDRESSES: You may submit comments, identified by RIN 3245–AF85, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Mary Frias, Office of Financial Assistance, Office of Capital Access, Small Business Administration, 409 Third Street SW., Washington, DC 20416.
- *Hand Delivery/Courier:* Mary Frias, Office of Financial Assistance, Office of Capital Access, Small Business Administration, 409 Third Street SW., Washington, DC 20416.

SBA will post all comments on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* please submit the information to Office of Financial Assistance, Office of Capital Access, 409 Third Street SW., Washington, DC 20416. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter, Financial Analyst, Office of Financial Assistance, Office of Capital Access, Small Business Administration, 409 Third Street SW., Washington, DC 20416; telephone: (202) 205–7654; *email: robert.carpenter@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

Executive Order 13563, Improving Regulation and Regulatory Review, 76 FR 3821 (January 21, 2011), directs agencies to ensure that regulations are accessible, consistent, written in plain language, and easy to understand in order to foster economic growth and job creation. Executive Order 13563 provides that our regulatory system "must identify and use the best, most innovative and least burdensome tools for achieving regulatory ends." Executive Order 13563 further provides that "[t]o facilitate the periodic review of existing significant regulations, agencies shall consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned." SBA has reviewed its regulations with regard to the Business Loan Programs, as defined below, and is proposing a number of amendments and revisions to accomplish this goal.

The SBA programs affected by this proposed rule are the 7(a) Loan Program authorized pursuant to section 7(a) of the Small Business Act (the Act) (15 U.S.C. 636(a)), the Microloan Program authorized pursuant to section 7(m) of the Act (15 U.S.C. 636(m)), the Surety Bond Guarantee Program authorized pursuant to part B of title IV of the Small Business Investment Act of 1958 (15 U.S.C. 694b *et seq.*), and the Development Company Program (the 504 Loan Program) authorized pursuant to title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 *et seq.*) (collectively referred to as the Business Loan Programs).

The Agency requests comments on all aspects of the regulatory revisions in this proposed rule and on any related issues affecting the Business Loan Programs.

II. Summary of Proposed Business Loan Program Changes

SBA's proposed changes are described in this section, with additional details on each located in the section-by-section analysis that follows:

A. Surety Bond Guarantee Program

1. *Threshold Change.* SBA proposes to change the threshold amounts set forth in §§ 115.19, 115.32, and 115.67 under which Sureties are required to notify SBA, or obtain SBA's prior written approval, of changes in the

contract or bond amounts for which an SBA bond guarantee has been issued. This change would remove the $100,000 threshold and rely solely on the 25% threshold.

2. *Quarterly Contract Completion Notification.* SBA proposes to add a requirement that all participating sureties must notify SBA of all contracts successfully completed on a quarterly basis through the submission of a quarterly contract completion report identifying all contracts successfully completed and any changes in the contract amount and related fees during the preceding fiscal quarter. This new requirement will be addressed in a new section at § 115.22, Quarterly Contract Completion Report.

3. *Quick Bond Guarantee Application and Agreement (SBA Form 990A) Increased Contract Limit.* SBA proposes to allow Sureties participating in the Prior Approval Program to use the Quick Bond Guarantee Application and Agreement (SBA Form 990A), authorized by 13 CFR 115.30(d)(2), for contracts that do not exceed $400,000. The current contract limit for use of this form is $250,000.

4. *Preferred Surety Bond Guarantee Program.* SBA was recently authorized to increase its guarantee percentage for bonds issued in the Preferred Surety Bond (PSB) Guarantee Program from "not to exceed 70 per centum" to "not to exceed 90 per centum" by section 874 of title VIII of Division A of the National Defense Authorization Act (NDAA), 2016, Public Law 114–92, 129 Stat. 726. This increase will become effective on November 25, 2016. Accordingly, SBA is proposing to amend its regulations to implement this change, including increasing the guarantee percentages in the PSB Program and requiring that, for a period of at least nine months following the admission of new Sureties into the PSB Program, Sureties obtain SBA's prior written approval before executing a bond greater than $2 million.

B. 7(a) and 504 Loan Programs and Microloan Program

1. *Consumer and Marketing Cooperatives.* SBA proposes to remove consumer and marketing cooperatives from the ineligible types of businesses identified in § 120.110.

2. *Change of Ownership Among Existing Owners in Eligible Passive Companies (EPC) and Operating Companies (OC).* SBA proposes to revise the regulation at § 120.111 to permit loans to finance a change of ownership when an existing owner of the Eligible Passive Company (EPC) is purchasing a departing co-owner's interest in the EPC for the benefit of an eligible OC. SBA also proposes to revise § 120.111(a)(3) to clarify that rent or lease payments cannot exceed the amount necessary to make the loan payment to the lender, and an additional amount to cover the EPC's direct expenses of holding the property, such as maintenance, insurance and property taxes.

3. *Personal Guarantee Conditions for Eligible Passive Companies (EPCs) and Operating Companies (OCs).* For consistency with § 120.160(a), SBA proposes to add language in § 120.111(a)(6) to state that SBA may require the personal guarantee of those owning less than 20 percent of the EPC or the OC. Additionally, SBA proposes to add language to provide that SBA may require the personal guarantee of those owning less than 5 percent ownership when circumstances warrant. Finally, SBA proposes to clarify that the personal guarantee requirements apply when an individual has an ownership interest in either the EPC or the OC.

4. *Restrictions on uses of proceeds.* SBA proposes to revise § 120.130 to add a new paragraph (e) and redesignate paragraphs (e) and (f) as paragraphs (f) and (g), respectively. The new paragraph (e) will include the text currently found in § 120.160(d), *Taxes,* which prohibits the use of loan proceeds to pay past-due Federal or state payroll taxes. SBA also proposes to revise paragraph (g) to remove the reference to "§ 120.203" and replace it with "§ 120.202".

5. *Personal Guarantees (for loans other than to EPCs/OCs).* SBA proposes to modify the language in § 120.160(a) to clarify that SBA may require the personal guarantee of those owning less than 5 percent ownership when circumstances warrant.

6. *Use of Computer Forms.* SBA proposes to remove § 120.194 as it is outdated and no longer necessary.

7. *Variable Interest Rates on 7(a) Loans.* SBA proposes to revise the language in § 120.214 with respect to when the allowable base rate is determined and when adjustments in the variable interest rate will be permitted.

8. *Fees that Lender pays SBA.* SBA proposes to add a new § 120.220(a)(3) to incorporate the provision under Public Law 114–38, section 2 (Veterans Entrepreneurship Act of 2015), which waives the up-front guaranty fee for SBA Express loans provided to businesses owned and controlled by veterans or spouses of veterans under certain circumstances. In order to incorporate advances in technology, SBA also proposes to update the regulation at § 120.220(b) to provide for the electronic payment of the up-front guaranty fee on all loans and to modify the timing of that payment on certain loans. Finally, SBA proposes corresponding changes to § 120.220(c) governing when SBA will refund the guaranty fee on certain loans.

9. *Fees which a Lender May Collect from an Applicant.* SBA proposes to add clarifying language to this section in an introductory paragraph explaining that the fees listed in § 120.221 are the only fees a Lender is permitted to collect from an applicant in connection with the loan application. SBA also proposes to remove the current language in § 120.221(e), which prohibits a Lender from charging a Borrower a pre-payment fee, and replace that language with the current language found in § 120.222(e), which permits a Lender to charge an Applicant for certain legal fees.

10. *Fees which the Lender or Associate May Not Collect from the Borrower or Share with Third Parties.* SBA proposes to revise § 120.222 to remove all of the text except the prohibition on sharing premiums for secondary market sales. In conjunction with the proposed changes to § 120.221, SBA proposes to include the fees a Lender may charge an Applicant or Borrower in one regulation; unless otherwise permitted by SBA Loan Program Requirements, any fees not included in § 120.221 will be prohibited.

11. *Use of Proceeds in the Builders Loan Program.* In § 120.394, SBA proposes to increase the limit on loan proceeds being used to acquire land under a line of credit under the Builder's Loan Program.

12. *On-Site/Off-Site Reviews for 7(a) Lenders, CDCs and Microloan Intermediaries (Intermediaries).* Due to SBA's improved electronic methods, virtual reviews, such as Analytical and Targeted Reviews, may cover much of what was previously performed in the scope of "on-site" reviews, diminishing the distinction between "off-site" and "on-site" reviews. Accordingly, SBA proposes to remove all references to "on-site" reviews in §§ 120.410(a)(2), 120.424(b), 120.433(b), 120.434(c), 120.630(a)(5), 120.710(e)(1), 120.812(c), 120.816(c), 120.839, 120.841(c), 120.1050, 120.1051, 120.1070 and 120.1400(c)(4). SBA will, however, retain the term "review/examination assessments" in these regulations. SBA is also proposing to replace references to "off-site" reviews and monitoring with "monitoring" in §§ 120.1025 and 120.1051(a).

13. *"Good Standing" now referred to as being "Satisfactory."* SBA proposes

to replace the term "Good Standing" as it relates to a Lender's status with its Federal Financial Institution Regulator (FFIR) with "Satisfactory" in §§ 120.410(e), 120.630(a)(4), and 120.1703(a)(4).

14. *The Certified Lenders Program.* SBA proposes to remove regulations pertaining to SBA's Certified Lenders Program (CLP). Section 120.440 will be replaced with a new regulation (see discussion immediately below), and § 120.441 will be reserved for future use.

15. *Delegated Authority Criteria.* SBA proposes to add a new title and text in place of § 120.440 to include in the regulations the criteria for delegated authority in the 7(a) Loan Program. With the addition of this regulation on delegated authority in general, the specific regulation at § 120.451, How does a Lender become a PLP Lender, is no longer necessary and will be removed and reserved for future use.

16. *When is SBA Released from Liability on its Guarantee?* SBA proposes to revise § 120.524(b) to allow SBA to utilize all legal means available when recovering any moneys paid on the guarantee plus interest, including administrative offset and judicial remedies.

17. *Suspension or Revocation from SBA's Secondary Market.* SBA proposes to revise § 120.660 to require that any action taken under this section be approved by both the Director, Office of Financial Assistance (D/FA) and the Director, Office of Credit Risk Management (D/OCRM). Authority is also proposed for suspension or revocation of a Lender participating in SBA's Secondary Market based upon specific regulatory action issued by a Lender's primary regulator or a going concern opinion issued by the Lender's auditor. Finally, SBA proposes to remove the reference to an obsolete form.

18. *Removal of Board Overlap Restriction.* SBA proposes to remove language from § 120.823(c)(5) that prohibits a CDC from having more than one of its Directors employed by, or serving on, the Board of Directors of any other non-CDC entity.

19. *Removal of Reference to Members for CDC Boards of Directors.* SBA proposes to replace the term "members" with the term "individuals" in § 120.823(d)(4)(ii), *Loan Committee.*

20. *Case-by-Case Application to Make a 504 Loan Outside of a CDC's Area of Operations.* SBA proposes to replace the term "District Office" in § 120.839 with the term "504 loan processing center." SBA also proposes to streamline the text in the introductory paragraph of this section.

21. *Ineligible Costs for 504 Loans.* SBA proposes to replace the term "meeting the IRS definition of capital equipment" in § 120.884(e)(3) with "having a remaining useful life of at least 10 years."

22. *Confidentiality of Reports, Risk Ratings and related Confidential Information Disclosure Prohibitions.* SBA proposes a limited expansion of parties identified in § 120.1060 as "permitted parties" who should be afforded access to, a lender's Review/Exam Report information, Risk Rating, and Confidential Information. Access to these permitted parties is granted only for the purpose of assisting a lender in improving the SBA Lender's, Intermediary's or Non-lending Technical Assistance Provider's (NTAP's) SBA program operation in conjunction with SBA's Lender Oversight Program and SBA's portfolio management.

23. *Lender Oversight Fees.* Due to the SBA's improved electronic methods for oversight that allows for virtual Reviews and other oversight activities to be conducted without an "on-site" visit, SBA proposes to eliminate the distinction between "on-site" and "off-site" in the fee components set forth in § 120.1070. Consistent with eliminating this distinction, the proposed rule would also provide flexibility in how SBA allocates its costs for Reviews, Examinations, Monitoring, or Other Lender Oversight Activities (*e.g.,* allocating actual costs assessed to each Lender versus apportioning costs by portfolio size).

24. *Grounds for Enforcement Actions—SBA Lenders.* SBA proposes to revise language to provide for consent to the appointment of a Receiver and/or other relief by SBA Supervised Lenders (except Other Regulated SBLCs) and by CDCs in § 120.1400(a).

25. *Types of Enforcement Actions—SBA Lenders.* SBA proposes to revise the language permitting SBA to initiate a request for appointment of a Receiver of an SBA Supervised Lender in § 120.1500(c)(3) and add language permitting SBA to initiate a request for appointment of a Receiver of a CDC in § 120.1500(e)(3).

26. *General Procedures for Enforcement Actions Against SBA Lenders, SBA Supervised Lenders, Other Regulated SBLCs, Management Officials, Other Persons, Intermediaries, and NTAPs.* SBA proposes to add language regarding the procedures for appointment of a Receiver over a CDC or an SBA Supervised Lender in §§ 120.1600(a), 120.1600(a)(6), and 120.1600(b)(4).

27. *First Lien Position 504 Loan ("FMLP") Program.* SBA proposes to add language to § 120.1707 to ensure that an allonge to the First Lien Position 504 Loan Pool Guarantee Agreement, in form acceptable to SBA, is executed with a transfer of a Seller's retained interest in an FMLP Pool Loan.

28. *Systemically Important Secondary Market Broker-Dealers (SISMBD) Loan Program.* SBA proposes to remove §§ 120.1800–1900, Subpart K, in its entirety to remove all references to the SISMBD Loan Program. The program was established under the American Recovery and Reinvestment Act (ARRA) in 2009 and the program authority expired on February 16, 2013.

III. Section by Section Analysis

1. *Section 115.19 Denial of liability.* Under the current regulation, the dollar threshold for determining when an increase in the Contract or bond amounts may result in denial of liability as the result of a material breach or a substantial regulatory violation is 25% or $100,000, whichever is less. Based on feedback from the surety industry and other stakeholders, SBA has determined that the existing threshold is outdated, and no longer reflects current industry practices and this change is being made to align SBA requirements with the prevailing industry practice, while managing the increased bond liability to the Government. Currently, under § 115.32(d), the surety is required to notify SBA if any contract or bond increases in the aggregate by 25% or $100,000, whichever is less. Further, if the bond increases as a result of a single change order by 25% or $100,000, whichever is less, the surety is required to obtain SBA's prior written approval of the increase. Prevailing industry practice allows increases to the contract and bond without prior notification to the surety. To better align SBA requirements with that of the industry, while managing the increased bond liability to the Government, this change would eliminate the dollar threshold of $100,000, while retaining the 25% threshold for purposes of denying liability under paragraphs (c)(1), (d), and (e)(2) of § 115.19.

2. *Section 115.22 Quarterly Contract Completion Report.* At present, SBA does not receive a final accounting of fees due and paid by the surety and principal on contracts that are successfully completed. Consequently, SBA is unable to ensure that fees due the Government as a result of an increase in the contract amount are paid in a timely manner on contracts that do not default. To better track fee payments and complement periodic on-site audits

at surety company locations, sureties participating in the SBA Surety Bond Guarantee Program would be required under this provision to submit a quarterly contract completion report within 45 days of the close of each quarter, identifying completed contracts, any changes in contract amount, and any related fees.

3. *Section 115.30 Submission of Surety's guarantee application.* Section 115.30(d)(2) provides a streamlined Quick Bond Guarantee Application and Agreement (SBA Form 990A) (Quick Bond) that is used in the Prior Approval Program for smaller contract amounts. It complements the surety industry practice of providing a shorter application for smaller contract amounts, and has helped to address sureties' perceptions about excessive paperwork in SBA's bond guarantee application process. The Quick Bond has been widely accepted by participating sureties.

The proposed rule would increase the Quick Bond eligible contract limit from $250,000 to $400,000. Implementation of the higher contract limit would increase the use of the Quick Bond and would provide access to bonding for more small contractors. It would more closely conform to the contract limits allowed in the abbreviated applications offered in the surety industry, and would respond to sureties' requests to raise the current limit.

Experience with the Quick Bond has been favorable at the $250,000 limit. Since its implementation in August of 2012, SBA has guaranteed more than 1,500 bonds and only 27 defaults have occurred. If the contract amount is increased, SBA would continue to closely monitor its experience with the Quick Bond.

4. *Section 115.32(d)(1) Notification and Approval.* Under the current regulation, a Prior Approval Surety must notify SBA of any increases or decreases in the Contract or bond amount that aggregate 25% of $100,000, whichever is less, as soon as the Surety acquires knowledge of the change, and also must obtain SBA's prior written approval of an increase in the original bond amount as a result of a single change order of at least 25% or $100,000, whichever is less. As discussed above under § 115.19, prevailing industry practice allows increases to the contract and bond without prior notification to the surety. To better align SBA requirements with that of the industry, while managing the increased bond liability to the Government, this change would eliminate the dollar threshold of $100,000 while retaining the 25% threshold.

5. *Section 115.60 Selection and admission of PSB Sureties.* SBA is proposing to amend this provision to provide that, for a period of nine months following admission into the PSB Program, the Surety must obtain SBA's prior written approval before executing a bond greater than $2 million. With the increase in the guarantee percentage to up to 90% (as discussed below), SBA wants the opportunity to evaluate the Surety's underwriting and claims and recovery processes to be assured that the PSB Surety has demonstrated a successful period of operations. At its discretion, SBA may extend this period to further evaluate the Surety.

6. *Section 115.67(a) Increases.* Under the current regulation, a Preferred Surety Bond Surety must pay the additional fees due from the Principal and the Surety on increases aggregating 25% of the contract or bond amount or $100,000, whichever is less. For consistency with the changes proposed to §§ 115.19 and 115.32, the proposed rule would eliminate the dollar threshold while retaining the 25% threshold.

7. *Section 115.68 Guarantee Percentage.* There are two SBA surety bond guarantee programs: The Prior Approval Program and the Preferred Surety Bond (PSB) Program. Under the Prior Approval Program, SBA approves each bond guarantee individually, and guarantees between 80% and 90% of a bond issued, depending on the status of the contractor or the amount of the Contract at the time the bond was executed. Under the PSB Program, sureties are authorized to issue, monitor and service bonds without prior SBA approval, but the SBA currently guarantees only up to 70% of the bond. Over the past several years, SBA has experienced a sharp decline in the PSB Program activity due to the lower guarantee rate. To increase participation in the PSB Program, and thereby assist more small businesses, Congress amended section 411(c)(1) of the Small Business Investment Act of 1958 (15 U.S.C. 694b(c)(1)), to authorize SBA to guarantee up to 90% in the PSB Program. The effective date of this increase was delayed until November 25, 2016, to allow time for the necessary rulemaking.

Accordingly, SBA is proposing to amend § 115.68 to adopt the same guarantee percentages for the PSB Program that are provided in the Prior Approval Program under § 115.31:

(1) SBA would reimburse a PSB Surety for 90% of the Loss incurred and paid if: (i) The total amount of the Contract at the time of Execution of the bond is $100,000 or less. Like the Prior Approval Program, when the Contract amount increases to more than $100,000 after bond Execution, the guarantee percentage would decrease by one percentage point for each $5,000 of increase or part thereof, but would not decrease below 80%. If the Contract decreases to $100,000, or less, after bond Execution, the guarantee percentage would increase to 90% if the Surety provides SBA with evidence supporting the decrease and any other information or documents requested; or (ii) the bond was issued on behalf of a small business owned and controlled by socially and economically disadvantaged individuals, on behalf of a qualified HUBZone small business concern, or on behalf of a small business owned and controlled by Veterans or a small business owned and controlled by Service-Disabled Veterans;

(2) SBA would reimburse a PSB Surety in an amount not to exceed 80% of the Loss incurred and paid on bond for Contracts in excess of $100,000 which are executed on behalf of non-disadvantaged concerns; and

(3) If the Contract or Order amount is increased above the Applicable Statutory Limit (as defined in § 115.10) after bond Execution, SBA's share of the Loss is limited to that percentage of the increased Contract or Order amount that the Applicable Statutory Limit represents multiplied by the guarantee percentage approved by SBA. For example, if a contract amount increases to $6,800,000, SBA's share of the loss under an 80% guarantee is limited to 76.5% (6,500,000/6,800,000 = 95.6% × 80% = 76.5%.)

8. *Section 120.110 What businesses are ineligible for SBA business loans?* SBA proposes to remove the existing § 120.110(l) that identifies consumer and marketing cooperatives as ineligible types of businesses for SBA financial assistance. Cooperatives are a form of organization and there is no reason why cooperatives should be excluded from eligibility. As such, all cooperatives may be eligible for SBA financing, provided they comply with all other Loan Program Requirements.

9. *Section 120.111 What conditions must an Eligible Passive Company satisfy?* SBA proposes to amend two paragraphs in § 120.111:

(1) *Introductory paragraph.* Presently, the Eligible Passive Company (EPC) may only use loan proceeds "to acquire or lease, and/or improve or renovate, real or personal property (including eligible refinancing), that it leases to one or more Operating Companies for

conducting the Operating Company's business." SBA proposes to include language to permit SBA loan proceeds to be used to finance a change of ownership between existing owners of the Eligible Passive Company (EPC), provided the transaction meets all conditions described in § 120.111.

(2) *Paragraph (a)(3).* The lease between the EPC and the OC. SBA proposes to clarify that rent or lease payments made by the OC to the EPC cannot exceed the amount necessary to make the loan payment to the lender, and an additional amount to cover the EPC's direct expenses of holding the property, such as maintenance, insurance and property taxes.

(3) Paragraph (a)(6). *Who must guarantee the loan.* SBA proposes to clarify that owners of 20 percent or more of either the EPC or the OC are required to personally guarantee the loan. Also, for consistency with § 120.160(a), SBA proposes to add language to § 120.111(a)(6) to provide that SBA may, in its discretion and in consultation with the Lender, require the personal guarantee of owners with less than 20% ownership of the EPC or the OC. Additionally, SBA proposes to add language to provide that SBA may require the personal guarantee of those owning less than 5% ownership when circumstances warrant.

10. *Section 120.130 Restrictions on uses of proceeds.* SBA proposes to revise § 120.130 to add a new paragraph (e) and redesignate paragraphs (e) and (f) as paragraphs (f) and (g), respectively. The new paragraph (e) will include the text currently found in § 120.160(d), *Taxes.* The current text in § 120.160(d) prohibit the use of proceeds for payment of past-due Federal or state withholding taxes, which is more applicable to § 120.130. SBA also proposes some minor modifications to the language to clarify the restriction. SBA also proposes to revise newly designated paragraph (g) to remove the reference "§ 120.203" and replace it with "§ 120.202". The regulation § 120.203 cited in this section was removed in 1996. The correction to remove the reference to § 120.203 and replace it with the reference to § 120.202 in § 120.130(f) was not made at the time and this oversight is being corrected here. The redesignation of paragraphs (e) and (f) to (f) and (g) in the section improves the flow with the inclusion of the new § 120.130(e).

11. *Section 120.160(a) Loan conditions.* SBA proposes to add the word "generally" to the last sentence of § 120.160(a) to clarify that SBA may require a personal guarantee of an owner who holds less than 5% when the circumstances warrant, such as Cooperatives where no one member may have an ownership interest of at least 5%.

12. *Section 120.194 Use of computer forms.* SBA proposes to remove the regulation at § 120.194 in its entirety as it is outdated. The regulation will be reserved for future use.

13. *Section 120.214 What conditions apply for variable interest rates*? The current regulation governing variable interest rates in § 120.214 provides that, when a Lender uses the prime or London Interbank Offered Rate (LIBOR) rate as the base rate in a variable interest rate loan, the base rate will be "that which is in effect on the first business day of the month, as printed in a national financial newspaper published each business day." (§ 120.214(c)) Further, the current regulation also provides that the "first change in the variable rate may occur on the first calendar day of the month following initial disbursement using the base rate (see paragraph (c) of this section) in effect on the first business day of the month." (§ 120.214(a)) SBA proposes to revise the language in §§ 120.214(a) and (c) to change when the base rate is determined and to permit adjustments in the variable interest rate other than just on the first business day of the month, provided the changes occur no more frequently than monthly.

14. *Section 120.220 Fees that Lender pays SBA.* SBA proposes to add a new paragraph § 120.220(a)(3) to incorporate into the regulations the statutory waiver of the up-front guaranty fee for SBA Express loans made to businesses owned and controlled by veterans and/or spouses of veterans in fiscal years when the subsidy rate for the 7(a) program is zero, as set forth in section 7(a)(31) of the Small Business Act (15 U.S.C. 636(a)(31)). The conditions a business must meet to qualify for this fee waiver will be explained in SBA Loan Program Requirements.

In § 120.220(b), in an effort to incorporate advances in technology, SBA proposes to update the regulation to advise Lenders to pay the guaranty fee electronically and to revise the timeframe within which a Lender must pay the guaranty fee to SBA for loans with a maturity of 12 months or less ("short-term loans"). SBA proposes to revise the timing of payment of the fee on a short-term loan from the time of application to within ten business days of SBA's approval of the loan. The current requirement was implemented when Lenders paid fees using checks. Currently, fees are paid electronically through Pay.gov. Requiring payment of the fee with the application for guaranty on short-term loans creates a bottleneck that delays the processing center's turn-around time for these loans.

Given the longer timeframe for the Lender to pay the fee, SBA also proposes to remove the first two sentences of § 120.220(c), which state when SBA will refund the guaranty fee paid on a short-term loan. With the additional time provided for payment of the fee, there will be no need for refunds.

15. *Section 120.221 Fees which the Lender may collect from a loan applicant.* SBA proposes to add clarifying language to this section in an introductory paragraph explaining that, unless otherwise permitted by SBA Loan Program Requirements (*e.g.*, the guaranty fee under § 120.220), the fees listed in § 120.221 are the only fees a lender is permitted to charge and collect from an Applicant or Borrower. SBA also proposes to remove the current language in § 120.221(e) because it incorrectly refers to a prohibited fee ("pre-payment fees"). SBA proposes to move the language that permits Lenders to collect fees for legal services presently found in § 120.222(e) to § 120.221(e). By making these changes, the guidance on permissible fees a Lender may charge and collect from an Applicant or Borrower will be contained in one regulation in an effort to reduce confusion.

16. *Section 120.222 Fees which the Lender or Associate may not collect from the Borrower or share with third parties.* SBA proposes to retitle § 120.222 to read "Prohibition on sharing premiums for secondary market sales." SBA also proposes to remove paragraphs (a), (b), (c), and (e), and revise the text of paragraph (d). The removal of the fees currently included in § 120.222(a), (b), and (c) does not mean that Lenders will now be permitted to charge these fees. On the contrary, the proposal to remove the fees from § 120.222 in conjunction with the proposed changes to § 120.221 are intended to place the guidance on allowable fees in a single regulation. Unless otherwise permitted by SBA Loan Program Requirements, any fee not identified in § 120.221 is prohibited. SBA proposes to retain the prohibition on the sharing of secondary market fees in § 120.222 for consistency with 13 CFR 103.5(c), which prohibits a lender from sharing any secondary market premium with a lender service provider.

17. *Section 120.394 What are the eligible uses of proceeds*? SBA proposes to increase the regulatory limitation on how much of the proceeds of a line of credit under the Builder's Loan Program can be used for land acquisition from

20% to 33%. SBA recognizes that the current limitation is reflective of limits imposed in 1977, and has not allowed for increases due to the passage of time and increases in land and development costs.

18. *Section 120.410 Requirements for all participating Lenders.* SBA proposes to replace the term "Good Standing," as it relates to a Lender's status with its Federal Financial Institution Regulator, with "considered Satisfactory by its Federal Financial Institution Regulator" (FFIR) in paragraph (e) to better align with terminology used by the FFIRs. Finally, given the diminished distinction between "on-site" and "off-site" reviews due to incorporation of virtual methods for oversight in SBA's Revised Risk-Based Review Protocol, SBA proposes to remove the references to "on-site" reviews/examinations in § 120.410(a)(2) (and in all other regulations) while retaining the term "review/examination assessments."

19. *Section 120.424 What are basic conditions a Lender must meet to securitize*? In paragraph (b), SBA proposes to remove the term "on-site" while retaining the term "review/examination assessments" in this section.

20. *Section 120.433 What are SBA's other requirements for sales and sales of participating interests*? In paragraph (b), SBA proposes to remove the term "on-site" while retaining the term "review/examination assessments" in this section.

21. *Section 120.434 What are SBA's requirements for loan pledges*? In paragraph (c), SBA proposes to remove the term "on-site" while retaining the term "review/examination assessments" in this section.

22. *Sections 120.440 and 120.441 The Certified Lenders Program ("CLP"); replaced with new Delegated Authority section.* SBA proposes to remove the title and all language in §§ 120.440 and 120.441, The Certified Lenders Program, as implementation of newer, more efficient methods of processing, closing, servicing, and liquidating have made this program unnecessary and obsolete. Beginning on the effective date of the final rule, the CLP would be terminated.

SBA also proposes to add a new heading before § 120.440 that reads "Delegated Authority Criteria" and to add new language in § 120.440 that sets forth the criteria for Lenders when applying for initial approval or renewal of delegated authority in the 7(a) Loan Program. These criteria are essentially identical to the criteria currently included in SBA's Standard Operating Procedure (SOP) 50 10 5(H), subpart A for the PLP, SBA Express and Export Express Programs. Under this new provision, SBA, in its discretion, would consider whether the Lender:

(a) Has the continuing ability to evaluate, process, close, disburse, service, liquidate and litigate SBA loans. This includes the ability to develop and analyze complete loan packages. SBA may consider the experience and capability of Lender's management and staff.

(b) Has satisfactory SBA performance (as defined in § 120.410(a)(2));

(c) Is in compliance with SBA Loan Program Requirements (*e.g.*, Form 1502 reporting, timely payment of all fees to SBA);

(d) Has completed to SBA's satisfaction all required corrective actions;

(e) Is subject to any enforcement action, order or agreement with other regulators or the presence of other regulatory concerns as determined by SBA; and

(f) Whether Lender exhibits other risk factors (*e.g.*, has rapid growth; low SBA activity; SBA loan volume; Lender, an officer or director is under investigation or indictment).

With respect to "low SBA activity," SBA considers making 5 SBA-guaranteed loans or less in a 2 year period to be low activity. Additionally, with respect to SBA loan volume, SBA would look at the Lender's proportion of SBA lending relative to the Lender's total loan portfolio.

Section 120.441 will be reserved for future use.

23. *Section 120.451 How does a Lender become a PLP Lender*? As a result of replacing § 120.440 with a new regulation setting out the criteria for delegated authority, the existing regulation at § 120.451 would no longer be necessary and would be removed and reserved for future use.

24. *Section 120.524 When is SBA released from liability on its guarantee*? SBA proposes to clarify that its rights to collect monies paid on a guarantee from which SBA determines it has been released of liability include judicial remedies and the right to offset funds due the Lender for the guaranty purchase of another loan. SBA's right to seek these remedies arises under contract law as interpreted by the courts.

25. *Section 120.630 Qualifications to be a Pool Assembler.* In paragraph (a)(4) SBA proposes to replace the term "good standing" with "satisfactory" when it relates to other federal regulators and SBA proposes to update the reference to the National Association of Securities Dealers (NASD) and replace it with the Financial Industry Regulatory Authority (FINRA), as NASD no longer exists. SBA also proposes to remove the term "on-site" while retaining the term "review/examination assessments" in subparagraph (a)(5).

26. *Section 120.660 Suspension or revocation.* SBA proposes to revise § 120.660 to require that any action taken under this section be approved by both the D/FA and the D/OCRM. SBA proposes to add a 120-day limit to the proposed suspension period to give participants sufficient time to resolve any correctable issues. Additionally, SBA proposes to reduce the timeframe for a revocation under this section to no more than two (2) years. SBA also proposes to identify regulatory orders or supervisory actions brought by a Lender's primary regulator or by SBA or a going concern opinion by the Lender's auditor as additional reasons for which SBA may suspend or revoke a Lender's privilege to participate in SBA's Secondary Market. The issuance of any regulatory order or supervisory action by the Lender's primary regulator will require notice to SBA within 5 business days (or as soon as practicable thereafter) to the D/OCRM and D/FA. In addition, SBA proposes to add a new paragraph (d) to this regulation to provide for early termination of a suspension or revocation under this section, in the D/FA and the D/OCRM's discretion, if termination is warranted.

SBA also proposes to eliminate the reference to SBA Form 1085 within this section as SBA Form 1085 is obsolete.

27. *Section 120.710(e)(1) What Must an Intermediary Demonstrate to Get a Reduction in the Loan Loss Reserve Fund*? SBA proposes to remove the reference to "on-site" reviews or examinations, while retaining the term "review/examination assessments." As SBA increases its use and application of electronic technology in lender oversight and reviews and examinations, the "on-site" review language is no longer generally applicable. The proposed language reflects a more current representation of reviews and examinations.

28. *Section 120.812 Probationary period for newly certified CDCs.* In paragraph (c), SBA proposes to remove the term "on-site" while retaining the term "review/examination assessments."

29. *Section 120.816 CDC non-profit status and good standing.* SBA proposes to remove the term "on-site" while retaining the term "review/examination assessments" in paragraph (c).

30. *Section 120.823 CDC Board of Directors.* SBA proposes to revise

§ 120.823(c)(5) to eliminate the language in this rule that currently prevents more than one Board member of a CDC from being employed by, or serving as a Director on the Board of, other entities, except for civic or charitable organizations not involved in financial services or economic development activities. This provision was intended to apply to associations not covered by 13 CFR 120.820, under which a CDC may be affiliated, including through common board members, with the entities described in that section. However, § 120.823(c)(5) has created confusion among the CDCs with respect to what other entities a CDC Director may be employed by or associated with as a Director. SBA has reconsidered this provision and determined that the affiliation restrictions set forth in § 120.820 sufficiently limit the ability of another entity to control the CDC. SBA will retain the sentence in this provision that references § 120.851(b) to reinforce the prohibition against a CDC Board member from serving on the Board of another CDC.

SBA also proposes to insert the word "individuals" in place of "members" to clarify in § 120.823(d)(4)(ii)(C) that individuals serving on the loan committee of a CDC do not have to be Members of the CDC or the CDC's Board. SBA no longer requires a CDC to have a membership and some CDC's were confused by the use of the term "member" in this section. Therefore, SBA intends to change the word "member" to "individual".

31. *Section 120.839 Case-by-case application to make a 504 loan outside of a CDC's Area of Operations.* SBA proposes to replace the term "District Offices" in this Section with "504 loan processing center" to reflect the SBA office that processes 504 loan applications. A revision to the regulation is needed in order to reflect the current protocol that the 504 loan processing center, not the District Office, submits its recommendation to the D/FA or designee, along with the application and supporting materials for the final decision if the applicant CDC meets the specific criteria to be authorized to make a loan outside of its stated Area of Operations. SBA also proposes to remove the term "on-site" while retaining "review/examination assessments" in this section.

32. *Section 120.841(c) CDC Reviews.* SBA proposes to remove the term "on-site" while retaining the term "review/examination assessments" in § 120.841(c).

33. *Section 120.884 Ineligible costs for 504 loans.* SBA proposes to define heavy duty construction equipment in § 120.884(e)(3) without reference to the IRS definition and to add the requirement that the equipment have a remaining useful life of at least 10 years. SBA currently requires that heavy duty construction equipment must be integral to the business' operations and meet the IRS definition of capital equipment. IRS no longer publishes a definition for "capital equipment."

34. *Section 120.1025 Off-site reviews and monitoring.* SBA proposes to remove specific reference to "off-site" regarding reviews and monitoring in § 120.1025, including in the title, and replace it with "monitoring".

35. *Section 120.1050 On-site reviews and examinations.* SBA proposes to remove specific reference to "on-site" regarding reviews and examinations in § 120.1050, including in the title.

36. *Section 120.1051 Frequency of on-site reviews and examinations.* SBA proposes to remove specific reference to "on-site" regarding reviews and examinations in § 120.1051, including in the title. SBA proposes to remove specific reference to "off-site review/monitoring" in paragraph (a) and replace it with "results of monitoring".

37. *Section 120.1060 Confidentiality of Reports, Risk Ratings and related Confidential Information.* SBA proposes a limited expansion of its definition in § 120.1060 of "permitted parties" who demonstrate a legitimate need to know a lender's Review/Exam Report information, Risk Rating, and Confidential Information for the purpose of assisting a lender in improving the SBA Lender's, Intermediary's or NTAP's SBA program operations in conjunction with SBA's Lender Oversight Program and SBA's portfolio management. This limited expansion of permitted parties may include the lender's parent entity, directors, auditors and those lender consultants under written contract specifically to assist the Lender in addressing SBA Findings and Corrective Actions Required to SBA's satisfaction. Consultants do not include Lender Service Providers. The consultant contract must provide for both (1) the consultant's agreement to abide by the disclosure prohibition in § 120.1060(b); and (2) agreement not to use the Report, Risk Rating, and Confidential Information for any other purpose than to assist Lender in addressing SBA Findings and Corrective Actions. This expansion may improve an SBA Lender's, Intermediary's or NTAP's ability to address SBA Findings and Corrective Actions or make other necessary improvements within their SBA operations. The change codifies SBA practice of approving disclosure of a lender's Report, Risk Rating, and Confidential Information for this group, obviating the need for case-by-case approval for these parties going forward.

38. *Section 120.1070 Lender oversight fees.* With the advent of new technologies, generally less costly and less burdensome virtual reviews such as Analytical and Targeted Reviews may cover much of what was previously performed within the scope of on-site reviews, diminishing the distinction between "off-site" and "on-site" reviews. Therefore, SBA is proposing to refine § 120.1070 to delete the distinctions based on "on-site" and "off-site," and to categorize the fee components only as Examinations, Reviews, Monitoring, and Other Lender Oversight Activities.

With respect to Reviews, under current regulations, SBA charges Lenders a fee for the following types of Reviews, including but not limited to, PARRiS Full Reviews, PARRiS Analytical Reviews, Targeted Reviews, and Delegated Authority Reviews. This fee is assessed based on the cost that SBA incurs under its contract for these Reviews. Under the proposed rule, SBA is specifying that SBA can charge a Lender the actual cost for Lender Loan Reviews (*e.g.,* Secondary Market Loan Reviews) and corrective action assessments, which is consistent with SBA's policy that Lenders that represent increased risk and warrant additional oversight should bear the expense of that oversight rather than that expense being apportioned to all Lenders.

The proposed section would also provide that SBA has discretion in how it allocates the costs to Lenders to allow contracting flexibility in how SBA pays for this cost. It would specify, consistent with SBA's current practice and current contracts, that in general, where the costs that SBA incurs for the oversight activity are specific to a Lender, SBA will charge that Lender for the actual costs and, where the costs that SBA incurs for the oversight activity are not sufficiently specific to a particular Lender but may be a flat fee paid to a vendor, SBA will charge a Lender based on that Lender's portion of SBA guarantees in the portfolio or segment of the portfolio the activity covers. For example, under its current review contract, SBA pays its contractor for each specific Lender's Full Review and SBA passes that cost along to the Lender for which the Review was conducted. Under the L/LMS contract, SBA pays its contractor a flat fee for providing L/LMS services that cover all Lenders and this amount is apportioned among all Lenders based on portfolio size.

39. *Section 120.1400(a) Grounds for enforcement actions—SBA Lenders.* SBA proposes to amend § 120.1400(a) to provide that by making SBA 7(a) guaranteed loans or SBA 504 loans after a certain date, SBA Supervised Lenders (except Other Regulated SBLCs) or CDCs, as applicable, consent to the appointment of a Receiver and such injunctive or other equitable relief as appropriate, and waive in advance any defenses to such relief as sought by SBA, in connection with an enforcement action. SBA is conditioning its guarantee of 7(a) loans made by SBA Supervised Lenders (except Other Regulated SBLCs) and 504 debentures after a certain date on consent to this relief in an enforcement action because the injury to SBA and its supervision and regulatory oversight of the SBA Supervised Lender or CDC due to the SBA Supervised Lender's or CDC's default under its agreement(s) with SBA would be irreparable and the amount of damage would be difficult to ascertain, making this relief necessary and required. A consent to receivership is not without precedent in other federal agency practice and has been upheld by the courts as valid and legally enforceable. *See, e.g., U.S.* v. *Mountain Village Company,* 424 F. Supp. 822 (D. Mass. 1976).

40. *Section 120.1500 Types of enforcement actions—SBA Lenders.* SBA proposes to revise § 120.1500(c)(3) and to add § 120.1500(e)(3) to clarify when SBA may initiate a request for appointment of a Receiver to administer and operate an SBA Supervised Lender and to permit SBA to initiate a request for appointment of a Receiver of a CDC.

41. *Section 120.1600 General procedures for enforcement actions against SBA Lenders, SBA Supervised Lenders, Other Regulated Small Business Lending Companies (SBLCs), Management Officials, Other Persons, Intermediaries, and Non-Lending Technical Assistance Providers (NTAPs).* SBA proposes to add language into §§ 120.1600(a), 120.1600(a)(6) and 120.1600(b)(4) providing that if SBA undertakes the appointment of a Receiver for a CDC or an SBA Supervised Lender, SBA will follow the applicable procedures under federal law to obtain such remedies and to enforce the CDC's or SBA Supervised Lender's consent and waiver in advance to those remedies.

42. *Section 120.1703 Qualifications to be a Pool Originator.* In paragraph (a)(4) SBA proposes to replace the term "good standing" with "Satisfactory" when it relates to other federal regulators.

43. *Section 120.1707 Seller's retained Loan Interest.* SBA is currently using an allonge to the First Lien Position 504 Loan Pool Guarantee Agreement, as opposed to requiring the execution of a new First Lien Position 504 Loan Pool Guarantee Agreement, to substantiate the transfer of a Seller's interest in an FMLP Pool Loan. The use of an allonge will require the purchaser of a Seller's retained interest to assume the original responsibilities of the Seller with regard to the FMLP Pool Loan. The allonge must be in form acceptable to SBA and the purchaser must acknowledge, assume and accept all of the original obligations and responsibilities of the Seller under the initial or subsequent First Lien Position 504 Loan Pool Guarantee Agreement. The proposed change will conform the rule to the current practice.

44. *Subpart K—Establishment of an SBA Direct Loan Program for Systemically Important Secondary Market Broker-Dealers (SISMBD Loan Program).* Since the SISMBD Loan Program expired on February 16, 2013, and was not extended by statute, SBA proposes to remove this subpart in its entirety.

Compliance With Executive Orders 13563, 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C., Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is not a "significant" regulatory action for the purposes of Executive Order 12866. In the interest of transparency, however, SBA has drafted a Regulatory Impact Analysis for the public's information in the next section. This is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

1. Is there a need for this regulatory action?

The Agency believes it needs to streamline and reduce regulatory burdens to facilitate robust participation in the business loan and surety bond programs that assist small and underserved U.S. businesses.

2. What are the potential benefits and costs of this regulatory action?

As stated above, the potential benefits of this proposed rule are based on its elimination of unnecessary participation burdens. Participants will benefit from clear and simpler regulatory directions that enable them to provide small business loans and bonds in a more efficient and cost effective manner.

3. What alternatives have been considered?

One "alternative" would be to eliminate even more regulatory burdens. The Agency will consider public comment and suggestions on how that can be done responsibly without substantially increasing the risk of waste, fraud, or abuse of the programs.

Executive Order 13563

A description of the need for this regulatory action and benefits and costs associated with this action, including possible distributional impacts that relate to Executive Order 13563, are included above in the Regulatory Impact Analysis under Executive Order 12866.

SBA's Business Loan Programs operate through the Agency's lending partners, which are Surety Bond Companies for the Surety Bond Guarantee Program, 7(a) Lenders for the 7(a) Loan Program, third party lenders, CDCs for the 504 Loan Program, and Microloan Intermediaries for the Microloan Program. The Agency has participated in public forums and meetings which have included outreach to hundreds of its lending partners to seek valuable insight, guidance, and suggestions for program reform.

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminates ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

SBA has determined that this proposed rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, SBA has determined that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C., Ch. 35

SBA has determined that this proposed rule imposes additional reporting requirements under the Paperwork Reduction Act (PRA). As described above, SBA proposes to require all participating sureties to notify SBA of all contracts that were successfully completed on a quarterly basis. The public is invited to comment on this proposed new report and to

submit any comments by the deadline stated in the **DATES** section of this document to: SBA Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, 725 17th Street NW., Washington, DC 20503.

SBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of SBA's functions, including whether the information will have a practical utility; (2) the accuracy of SBA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology. SBA will submit the proposed form and other documents required under the Paperwork Reduction Act to OMB for review and approval.

A summary description of this information collection, the respondents, and the estimate of the annual hour burden resulting from this new process is provided below. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering information needed, and completing and reviewing the responses.

Title: Quarterly Contract Completion Report.

Description: The Quarterly Contract Completion Report would be submitted by all participating surety companies to provide SBA with information about successfully completed contracts. The information reported would include the Surety Bond Guarantee number, the name of the Principal, the original Contract dollar amount, the revised Contract dollar amount (if applicable), the date of Contract completion, and a fee recap. Reports would be due to SBA within 45 days of each fiscal quarter.

OMB Control Number: New Collection.

Description of and Estimated Number of Respondents: The proposed new collection would be submitted by the surety companies that participate in the SBG Program. The burden estimate for this requirement is based on the 23 current participants.

Estimated Number of Responses: Each of the estimated 23 sureties would be required to submit the report to SBA 4 times per year, for a total of 92 responses.

Estimated Response Time: It is estimated that each surety would need approximately 1 hour to complete the proposed report.

Total Estimated Annual Hour Burden: 92 hours.

Estimated Annual Cost Burden: $4,604.

Regulatory Flexibility Act, 5 U.S.C. 601–612

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires the agency to "prepare and make available for public comment an initial regulatory analysis" which will "describe the impact of the proposed rule on small entities." Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. There are 23 sureties (none of them small entities) that participate in the SBG Program, and no part of this rule would impose any significant cost or burden on them. Although the rulemaking will impact all of the approximately 5,000 7(a) Lenders (some of which are small), all of the approximately 250 CDCs (all of which are small), and 145 Microloan Intermediaries (most of which are small) SBA does not believe the impact will be significant. The proposed rule will reduce the burden of the Agency's lending partners because they choose their own level of program participation (*i.e.,* 7(a) Lenders and CDCs are not required to process more loan applications simply because there is a reduced burden for small businesses to apply for a business loan). Therefore the proposed modernization of certain program participation requirements would not have a substantial economic impact or cost on the small business borrower, lender, or CDC, and in fact, may reduce costs to lender participants.

SBA believes that this proposed rule encompasses best practice guidance that aligns with the Agency's mission to increase access to capital for small businesses and facilitate American job preservation and creation with the removal of unnecessary regulatory requirements. A review of the summary and preamble above will provide more detailed explanations discussing the specific improvements that will reduce regulatory burdens and encourage increased program participation. For these reasons, SBA has determined that there is no negative impact on a substantial number of small entities. SBA invites comment from members of the public who believe there will be a significant impact on sureties, microloan intermediaries, participant lenders, CDCs, or small businesses.

List of Subjects

13 CFR Part 115

Claims, Reporting and recordkeeping requirements, Small businesses, Surety bonds.

13 CFR Part 120

Community development, Equal employment opportunity, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA proposes to amend 13 CFR parts 115 and 120 as follows:

PART 115—SURETY BOND GUARANTEE

■ 1. The authority citation for part 115 continues to read as follows:

Authority: 5 U.S.C. app 3; 15 U.S.C. 687b, 687c, 694a, 694b note; and Pub. L. 110–246, Sec. 12079, 122 Stat. 1651.

§ 115.19 [Amended]

■ 2. Amend § 115.19 by removing the phrase "or $100,000, whichever is less" in paragraph (c)(1), the second sentence of paragraph (d), and paragraph (e)(2).

■ 3. Add § 115.22 to subpart A to read as follows:

§ 115.22 Quarterly Contract Completion Report.

The Surety must submit a Quarterly Contract Completion Report within 45 days after the close of each fiscal year quarter ending December 31, March 31, June 30, and September 30, that identifies each contract successfully completed during the quarter.

The report shall include:

(a) The SBA Surety Bond Guarantee Number,

(b) Name of the Principal,

(c) The original Contract Dollar Amount,

(d) The revised Contract Dollar Amount (if applicable),

(e) The date of Contract completion, and

(f) A summary specifying the fee amounts paid to SBA by the Surety and Principal, the fee amounts due to SBA as a result of any increases in the Contract amount, and the fee amounts to be refunded to the Principal or rebated to the Surety as a result of any decreases in the Contract amount.

§ 115.30 [Amended]

■ 4. Amend § 115.30 by removing "$250,000" from the second sentence of paragraph (d)(2)(i) and adding in its place "$400,000".

§ 115.32 [Amended]

■ 5. Amend § 115.32 by removing "or $100,000, whichever is less" from the first and second sentences of paragraph (d)(1).

■ 6. Amend § 115.60 by adding third and fourth sentences at the end of paragraph (b) to read as follows:

§ 115.60 Selection and admission of PSB Sureties.

* * * * *

(b) * * * For a period of nine months following admission to the PSB program, the Surety must obtain SBA's prior written approval before executing a bond greater than $2 million so that SBA may evaluate the Surety's performance in its underwriting and claims and recovery functions. At the end of this nine month period, SBA may in its discretion extend this period to allow SBA to further evaluate the Surety's performance.

§ 115.67 [Amended]

■ 7. Amend § 115.67 by removing the phrase "or $100,000, whichever is less" from the second sentence of paragraph (a).

■ 8. Revise § 115.68 to read as follows:

§ 115.68 Guarantee percentage.

SBA reimburses a PSB Surety in the same percentages and under the same terms as set forth in § 115.31.

PART 120—BUSINESS LOANS

■ 9. The authority citation for part 120 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6), (b)(7), (b)(14), (h) and note, 636(a), (h) and (m), 650, 687(f), 696(3) and 697(a) and (e); Pub. L. 111–5, 123 Stat. 115; Pub. L. 111–240, 124 Stat. 2504; Pub. L. 114–38, 129 Stat. 437.

§ 120.110 [Amended]

■ 10. Remove and reserve § 120.110(l).

■ 11. Amend § 120.111 by revising the introductory text and paragraphs (a)(3) and (6) to read as follows:

§ 120.111 What conditions must an Eligible Passive Company satisfy?

An Eligible Passive Company must use loan proceeds to either acquire or lease, and/or improve or renovate, real or personal property (including eligible refinancing), that it leases to one or more Operating Companies for conducting the Operating Company's business (references to Operating Company in paragraphs (a) and (b) of this section mean each Operating Company) or to finance a change of ownership between the existing owners of the Eligible Passive Company. Any ownership structure or legal form may qualify as an Eligible Passive Company.

(a) * * *

(3) The lease between the Eligible Passive Company and the Operating Company must be in writing and must be subordinated to SBA's mortgage, trust deed lien, or security interest on the property. Also, the Eligible Passive Company (as landlord) must furnish as collateral for the loan an assignment of all rents paid under the lease. The rent or lease payments cannot exceed the amount necessary to make the loan payment to the lender, and an additional amount to cover the EPC's direct expenses of holding the property, such as maintenance, insurance and property taxes;

* * * * *

(6) Each holder of an ownership interest constituting at least 20 percent of either the Eligible Passive Company or the Operating Company must guarantee the loan (the trustee shall execute the guaranty on behalf of any trust). SBA, in its discretion, consulting with the Participating Lender, may require other appropriate individuals to guarantee the loan as well, except SBA generally will not require personal guarantees from those owning less than 5 percent ownership.

* * * * *

■ 12. Amend § 120.130 by redesignating paragraphs (e) and (f) as paragraphs (f) and (g) respectively, adding new paragraph (e), and revising newly redesignated paragraph (g).

The addition and revisions read as follows:

§ 120.130 Restrictions on uses of proceeds.

* * * * *

(e) The applicant may not use any of the proceeds to pay past-due Federal or state payroll taxes;

* * * * *

(g) Any use restricted by §§ 120.201, 120.202, and 120.884 (specific to 7(a) loans and 504 loans respectively).

■ 13. Amend § 120.160 by revising the second sentence of paragraph (a) and by removing paragraph (d).

The revision reads as follows:

§ 120.160 Loan conditions.

* * * * *

(a) * * * SBA, in its discretion, consulting with the Participating Lender, may require other appropriate individuals to guarantee the loan as well, except SBA generally will not require personal guarantees from those owning less than 5 percent ownership.

* * * * *

§ 120.194 [Removed and reserved]

■ 14. Remove and reserve § 120.194.

■ 15. Amend § 120.214 by revising the second sentence in paragraph (a) and revising paragraph (c) to read as follows:

§ 120.214 What conditions apply for variable interest rates?

* * * * *

(a) * * * Subsequent changes may occur 2 business days (or more) after a change in the identified base rate; *however,* such changes may not occur more often than monthly.

* * * * *

(c) *Base rate.* (1) The base rate will be one of the following:

(i) The prime rate;

(ii) The thirty-day (1-month) London Interbank Offered Rate (LIBOR) plus 3 percentage points; or

(iii) The Optional Peg Rate.

(2) The prime or LIBOR rate will be that which is in effect on the date SBA receives a complete loan application. The initial prime or LIBOR base rate and subsequent changes to the prime or LIBOR base rate must follow the rates as printed in a national financial newspaper or Web site published each business day.

* * * * *

■ 16. Amend § 120.220 by adding paragraph (a)(3), revising the first and third sentences of paragraph (b), and removing the first two sentences of paragraph (c).

The additions and revisions read as follows:

§ 120.220 Fees that Lender pays SBA.

* * * * *

(a) * * *

(3) For loans approved under section 7(a)(31) of the Small Business Act to veterans and/or the spouse of a veteran. In fiscal years when the 7(a) program is at zero subsidy, SBA will not collect a guarantee fee in connection with a loan made under section 7(a)(31) of the Small Business Act to a business owned and controlled by a veteran or the spouse of a veteran.

(b) * * * For a loan with a maturity of twelve (12) months or less, the Lender must pay the guaranty fee to SBA electronically within 10 business days after SBA gives its loan approval. * * * For a loan with a maturity in excess of twelve (12) months, the Lender must pay the guaranty fee to SBA electronically within 90 days after SBA gives its loan approval. * * *

* * * * *

■ 17. Amend § 120.221 by revising the section heading, adding introductory text, and revising paragraph (e) to read as follows:

§ 120.221 Fees and expenses which the Lender may collect from a loan applicant or Borrower.

Unless otherwise allowed by SBA Loan Program Requirements, the Lender may charge and collect from the applicant or Borrower only the following fees and expenses:

* * * * *

(e) *Legal services.* Lender may charge the Borrower for legal services, but only for hourly charges for requested services actually rendered.

■ 18. Revise § 120.222 to read as follows:

§ 120.222 Prohibition on sharing premiums for secondary market sales.

The Lender or its Associates may not share in any premium received from the sale of an SBA guaranteed loan in the secondary market with a Service Provider, packager, or other loan-referral source.

§ 120.394 [Amended]

■ 19. Amend § 120.394 in the third sentence by removing the term "20" and adding in its place the term "33".

■ 20. Amend § 120.410 in paragraph (a)(2) by removing the term "on-site" from the third sentence and by revising paragraph (e) to read as follows:

§ 120.410 Requirements for all participating Lenders.

* * * * *

(e) Be in good standing with SBA, as defined in § 120.420(f) (and determined by SBA in its discretion), and, as applicable, with its state regulator and be considered satisfactory by its Federal Financial Institution Regulator (as determined by SBA and based on, for example, information in published orders/agreements and call reports); and

* * * * *

§ 120.424 [Amended]

■ 21. Amend § 120.424(b) by removing the term "on-site" from the third sentence.

§ 120.433 [Amended]

■ 22. Amend § 120.433(b) by removing the term "on-site" from the third sentence.

§ 120.434 [Amended]

■ 23. Amend § 120.434(c) by removing the term "on-site" from the third sentence.

■ 24. Revise the undesignated center heading following § 120.435 to read "Delegated Authority Criteria".

■ 25. Revise § 120.440 to read as follows:

§ 120.440 How does a Lender obtain delegated authority?

(a) In making its decision to grant or renew a delegated authority, SBA considers whether the Lender, as determined by SBA in its discretion:

(1) Has the continuing ability to evaluate, process, close, disburse, service, liquidate and litigate SBA loans. This includes the ability to develop and analyze complete loan packages. SBA may consider the experience and capability of Lender's management and staff.

(2) Has satisfactory SBA performance (as defined in § 120.410(a)(2));

(3) Is in compliance with SBA Loan Program Requirements (*e.g.,* Form 1502 reporting, timely payment of all fees to SBA);

(4) Has completed to SBA's satisfaction all required corrective actions;

(5) Is subject to any enforcement action, order or agreement with a regulator or the presence of other regulatory concerns as determined by SBA; and

(6) Whether Lender exhibits other risk factors (*e.g.,* has rapid growth; low SBA activity; SBA loan volume; Lender, an officer or director is under investigation or indictment).

(b) Delegated authority decisions are made by the appropriate SBA official in accordance with Delegations of Authority, and are final.

(c) If delegated authority is approved or renewed, Lender must execute a Supplemental Guarantee Agreement, which will specify a term not to exceed two years. SBA may grant shortened renewals based on risk or any of the other delegated authority criteria. Lenders with less than 3 years of SBA lending experience will be limited to a term of 1 year or less.

§ 120.441 [Removed and reserved]

■ 26. Remove and reserve § 120.441.

§ 120.451 [Removed and reserved]

■ 27. Remove and reserve § 120.451.

■ 28. Amend § 120.524 by revising paragraph (b) to read as follows:

§ 120.524 When is SBA released from liability on its guarantee?

* * * * *

(b) If SBA determines, at any time, that any of the events set forth in paragraph (a) of this section occurred in connection with that loan, SBA is entitled to recover any moneys paid on the guarantee plus interest from the Lender. In the exercise of its rights, SBA may utilize all legal means available, including offset and judicial remedies.

* * * * *

■ 29. Amend § 120.630 by revising paragraph (a)(4) to read as follows and paragraph (a)(5) by removing the term "on-site" from the third sentence:

§ 120.630 Qualifications to be a Pool Assembler.

(a) * * *

(4) Is in good standing with SBA (as the D/FA determines in his or her discretion), and is Satisfactory with the Office of the Comptroller of the Currency ("OCC") if it is a national bank, the Federal Deposit Insurance Corporation if it is a bank not regulated by the OCC, or the Financial Industry Regulatory Authority ("FINRA") if it is a member as determined by SBA.

* * * * *

■ 30. Amend § 120.660 by:

■ a. Revising paragraph (a) introductory text and paragraphs (a)(1)(ii) and (a)(2);

■ b. Adding paragraph (a)(3);

■ c. Revising paragraph (c); and

■ d. Adding paragraph (d) to read as follows:

§ 120.660 Suspension or revocation.

(a) *Temporary suspension or revocation of Lender, broker, dealer, or Registered Holder for violation of Secondary Market rules and regulations.* The D/FA together with the Director, Office of Credit Risk Management (D/OCRM) may suspend for a period of no more than 120 calendar days or revoke for a period of no more than two (2) years, the privilege of a Lender, broker, dealer, or Registered Holder to sell, purchase, broker, or deal in loans or Certificates for:

(1) * * *

(ii) Any provisions in the contracts entered into by the parties, including SBA Forms 1086, 1088 and 1454;

(2) Knowingly submitting false or fraudulent information to the SBA or FTA; or

(3) A Lender's receipt, from its primary regulator, of a cease and desist order, a consent agreement affecting capital or commercial lending issues, a supervisory action citing unsafe or unsound banking practices or other items of concern to SBA and its potential risk to SBA through loan sales; or a going concern opinion issued by the Lender's auditor. A Lender subject to such action or opinion must notify the D/FA and the D/OCRM within five business days (or as soon as practicable thereafter) of the issuance of any such action or opinion, including providing copies of the relevant documents for review.

* * * * *

(c) *Notice to suspend or revoke.* The D/FA and the D/OCRM shall notify the affected party in writing, providing the

reasons therefore, at least 10 business days prior to the effective date of the suspension or revocation. The affected party may appeal the suspension or revocation made under this section pursuant to the procedures set forth in part 134 of this chapter. The action taken by the D/FA and the D/OCRM will remain in effect pending resolution of the appeal.

(d) *Early termination of suspension or revocation.* SBA may, by written notice, terminate a secondary market suspension or revocation under this section, if the D/FA and the D/OCRM, in their sole discretion, determine that such termination is warranted for good cause.

§ 120.710 [Amended]

■ 31. Amend § 120.710 by removing the term "on-site" from the third sentence of paragraph (e)(1).

■ 32. Amend § 120.812 by revising the last sentence of paragraph (c) to read as follows:

§ 120.812 Probationary period for newly certified CDCs.

* * * * *

(c) * * * Other factors may include, but are not limited to review/examination assessments, historical performance measures, loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA mission).

* * * * *

■ 33. Amend § 120.816 by revising the last sentence of paragraph (c) to read as follows:

§ 120.816 CDC non-profit status and good standing.

* * * * *

(c) * * * Other factors may include, but are not limited to, review/examination assessments, historical performance measures, loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA mission).

* * * * *

■ 34. Amend § 120.823 by revising paragraphs (c)(5) and (d)(4)(ii)(C) to read as follows:

§ 120.823 CDC Board of Directors.

* * * * *

(c) * * *

(5) No CDC Board member may serve on the Board of another CDC in accordance with § 120.851(b).

(d) * * *

(4) * * *

(ii) * * *

(C) Have at least two individuals with commercial lending experience satisfactory to SBA; and

* * * * *

■ 35. Amend § 120.839 by revising the introductory text to read as follows:

§ 120.839 Case-by-case application to make a 504 loan outside of a CDC's Area of Operations.

A CDC may apply to make a 504 loan for a Project outside its Area of Operations by submitting a request to the 504 loan processing center. The applicant CDC must demonstrate that it can adequately fulfill its 504 program responsibilities for the 504 loan, including proper servicing. In addition, the CDC must have satisfactory SBA performance, as determined by SBA in its discretion. The CDC's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance. Other factors may include, but are not limited to, review/examination assessments, historical performance measures, loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA mission). The 504 loan processing center may approve the application if:

* * * * *

■ 36. Amend § 120.841 by revising the last sentence of paragraph (c) to read as follows:

§ 120.841 Qualifications for the ALP.

* * * * *

(c) * * * Other factors may include, but are not limited to review/examination assessments, historical performance measures, loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA mission);

* * * * *

■ 37. Amend § 120.884 by revising paragraph (e)(3) to read as follows:

§ 120.884 Ineligible costs for 504 loans.

* * * * *

(e) * * *

(3) Construction equipment (except for heavy duty construction equipment integral to the business' operations with a remaining useful life of a minimum of 10 years).

■ 38. Amend § 120.1025 by revising the section heading and removing "off-site reviews and monitoring" and adding in its place "monitoring".

The revision reads as follows:

§ 120.1025 Monitoring.

* * * * *

■ 39. Amend § 120.1050 by revising the section heading and removing the phrase "on-site" wherever it occurs.

The revision reads as follows:

§ 120.1050 Reviews and examinations.

* * * * *

■ 40. Amend § 120.1051 by revising the section heading and paragraph (a) and removing the phrase "on-site" wherever it occurs.

The revisions read as follows:

§ 120.1051 Frequency of reviews and examinations.

* * * * *

(a) Results of monitoring, including an SBA Lender's, Intermediary's or NTAP's Risk Rating;

* * * * *

■ 41. Revise § 120.1060(b) to read as follows:

§ 120.1060 Confidentiality of Reports, Risk Ratings and related Confidential Information.

* * * * *

(b) *Disclosure prohibition.* Each SBA Lender, Intermediary, and NTAP is prohibited from disclosing its Report, Risk Rating, and Confidential Information, in full or in part, in any manner, without SBA's prior written permission. An SBA Lender, Intermediary, and NTAP may use the Report, Risk Rating, and Confidential Information for confidential use within its own immediate corporate organization. SBA Lenders, Intermediaries, and NTAPs must restrict access to their Report, Risk Rating and Confidential Information to their respective parent entities, officers, directors, employees, auditors and consultants, in each case who demonstrate a legitimate need to know such information for the purpose of assisting in improving the SBA Lender's, Intermediary's, or NTAP's SBA program operations in conjunction with SBA's Program and SBA's portfolio management (for purposes of this regulation, each referred to as a "permitted party"), and to those for whom SBA has approved access by prior written consent, and those for whom access is required by applicable law or legal process. If such law or process requires SBA Lender, Intermediary, or NTAP to disclose the Report, Risk Rating, or Confidential Information to any person other than a permitted party, SBA Lender, Intermediary, or NTAP will promptly notify SBA and SBA's Information Provider in writing and in advance of such disclosure so that SBA and the Information Provider have, within their discretion, the opportunity to seek

appropriate relief such as an injunction or protective order prior to disclosure. For purposes of this regulation, "consultants" means only those consultants that are under written contract with an SBA Lender, Intermediary or NTAP specifically to assist with addressing its Report Findings and Corrective Actions to SBA's satisfaction. The consultant contract must provide for both the consultant's agreement to abide by the disclosure prohibition in this paragraph and the consultant's agreement not to use the Report, Risk Rating, and Confidential Information for any purpose other than to assist with addressing the Report Findings and Corrective Actions. "Information Provider" means any contractor that provides SBA with the Risk Rating. Each SBA Lender, Intermediary, and NTAP must ensure that each permitted party is aware of and agrees to these regulatory requirements and must ensure that each such permitted party abides by them. Any disclosure of the Report, Risk Rating, or Confidential Information other than as permitted by this regulation may result in appropriate action as authorized by law. An SBA Lender, Intermediary, and NTAP will indemnify and hold harmless SBA from and against any and all claims, demands, suits, actions, and liabilities to any degree based upon or resulting from any unauthorized use or disclosure of the Report, Risk Rating, or Confidential Information. Information Provider contact information is available from the Office of Capital Access.

■ 42. Amend § 120.1070 by:

■ a. Revising paragraphs (a)(1) through (4);

■ b. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively;

■ c. Adding a new paragraph (b);

■ d. Revising the first and second sentences of newly redesignated paragraph (c); and

■ e. Revising the final sentence of newly redesignated paragraph (d).

The additions and revisions read as follows:

§ 120.1070 Lender oversight fees.

* * * * *

(a) * * *

(1) *Examinations.* The costs of conducting a safety and soundness examination and related activities of an SBA-Supervised Lender, including any expenses that are incurred in relation to the examination and such activities.

(2) *Reviews.* The costs of conducting a review of a Lender or a Lender's loans, and related review activities (*e.g.*, corrective action assessments, delegated loan reviews), including any expenses that are incurred in relation to the review and such activities.

(3) *Monitoring.* The costs of conducting monitoring reviews of a Lender, including any expenses that are incurred in relation to the monitoring review activities.

(4) *Other lender oversight activities.* The costs of additional expenses that SBA incurs in carrying out other lender oversight activities (for example, the salaries and travel expenses of SBA employees and equipment expenses that are directly related to carrying out lender oversight activities, technical assistance and analytics to support the monitoring and review program, and supervision and enforcement activity costs).

(b) *Allocation.* SBA will assess to Lender(s) the costs associated with the review, examination, monitoring, or other lender oversight activity, as determined by SBA in its discretion.

(1) In general:

(i) Where the costs that SBA incurs for a review, exam, or other lender oversight activity are specific to a particular Lender, SBA will charge that Lender a fee for the actual costs of conducting the review, exam, or other lender oversight activity; and

(ii) Where the costs that SBA incurs for the lender oversight activity are not sufficiently specific to a particular Lender, SBA will assess a fee based on each Lender's portion of the total dollar amount of SBA guarantees in SBA's total portfolio or in the relevant portfolio segment being reviewed or examined, to cover the costs of such activity.

(2) SBA may waive the assessment of this fee for all Lenders owing less than a threshold amount below which SBA determines that it is not cost effective to collect the fee.

(c) * * * For the examinations or reviews conducted under paragraphs (a)(1) and (2) of this section, SBA will bill each Lender for the amount owed following completion of the examination, review or related activity. For monitoring conducted under paragraph (a)(3) of this section and the other lender oversight activity expenses incurred under paragraph (a)(4) of this section, SBA will bill each Lender for the amount owed on an annual basis. * * *

(d) * * * In addition, a Lender's failure to pay any of the fee components described in this section, or to pay interest, charges and penalties that have been charged, may result in a decision to suspend or revoke a participant's eligibility, limit a participant's delegated authority, or other remedy available under law.

■ 43. Amend § 120.1400 by revising paragraph (a) to read as follows:

§ 120.1400 Grounds for enforcement actions—SBA Lenders.

(a) *Agreements.* By making SBA 7(a) guaranteed loans or 504 loans, SBA Lenders automatically agree to the terms, conditions, and remedies in Loan Program Requirements, as promulgated or issued from time to time and as if fully set forth in the SBA Form 750 (Loan Guaranty Agreement), Development Company 504 Debenture, CDC Certification, Servicing Agent Agreement, or other applicable participation, guaranty, or supplemental agreement. SBA Lenders further agree that a violation of Loan Program Requirements constitutes default under their respective agreements with SBA.

(1) *Additional agreements by CDCs.* By obtaining approval for 504 loans after [date 60 days from publication of final rule in the **Federal Register**], a CDC consents to the remedies in § 120.1500(e)(3) and waives in advance any defenses to such relief as sought by SBA. The CDC agrees that its consent to SBA's application to a federal court of competent jurisdiction for appointment of a receiver of SBA's choosing, an injunction or other equitable relief, and the CDC's consent in advance to the court's granting of SBA's application, includes a waiver of objection to a receiver or other such relief and may be enforced upon any basis in law or equity recognized by the court.

(2) *Additional agreements by SBA Supervised Lenders (except Other Regulated SBLCs).* By making SBA 7(a) guaranteed loans after [date 60 days from publication of final rule in the **Federal Register**], an SBA Supervised Lender (except an Other Regulated SBLC) consents to the remedies in § 120.1500(c)(3) and waives in advance any defenses to such relief as sought by SBA. The SBA Supervised Lender agrees that its consent to SBA's application to a federal court of competent jurisdiction for appointment of a receiver of SBA's choosing, an injunction or other equitable relief, and the SBA Supervised Lender's consent in advance to the court's granting of SBA's application, includes a waiver of objection to a receiver or other such relief and may be enforced upon any basis in law or equity recognized by the court.

* * * * *

■ 44. Amend § 120.1500 by revising paragraph (c)(3) and adding paragraph (e)(3) to read as follows:

§ 120.1500 Types of enforcement actions—SBA Lenders.

* * * * *

(c) * * *

(3) *Initiate request for appointment of receiver and/or other relief.* The SBA may make application to any federal court of competent jurisdiction for the court to take exclusive jurisdiction, without notice, of an SBA Supervised Lender, and SBA shall be entitled to the appointment of a receiver of SBA's choosing to hold, administer, operate, and/or liquidate the SBA Supervised Lender; and to such injunctive or other equitable relief as may be appropriate. Without limiting the foregoing and with SBA's written consent, the receiver may take possession of the portfolio of 7(a) loans and sell such loans to a third party, and/or take possession of servicing activities of 7(a) loans and sell such servicing rights to a third party.

* * * * *

(e) * * *

(3) Apply to any federal court of competent jurisdiction for the court to take exclusive jurisdiction, without notice, of the CDC, and SBA shall be entitled to the appointment of a receiver of SBA's choosing to hold, administer, operate and/or liquidate the CDC; and to such injunctive or other equitable relief as may be appropriate. Without limiting the foregoing and with SBA's consent, the receiver may take possession of the portfolio of 504 loans and/or pending 504 loan applications, including for the purpose of carrying out an enforcement order under paragraph (e)(1) of this section.

■ 45. Amend § 120.1600 by:

■ a. Revising paragraph (a) introductory text;

■ b. Adding paragraph (a)(6); and

■ c. Revising paragraph (b)(4).

The revisions and additions read as follows:

§ 120.1600 General procedures for enforcement actions against SBA Lenders, SBA Supervised Lenders, Other Regulated Small Business Lending Companies (SBLCs), Management Officials, Other Persons, Intermediaries, and Non-Lending Technical Assistance Providers (NTAPs).

(a) *In general.* Except as otherwise set forth for the enforcement actions listed in paragraphs (a)(6), (b) and (c) of this section, SBA will follow the procedures listed below.* * *

* * * * *

(6) *Receiverships of Certified Development Companies and/or other relief.* If SBA undertakes the appointment of a receiver for a Certified Development Company and/or injunctive or other equitable relief, paragraphs (a)(1) through (5) of this section will not apply and SBA will follow the applicable procedures under federal law to obtain such remedies and to enforce the Certified Development Company's consent and waiver in advance to those remedies.

(b) * * *

(4) *Receiverships, transfer of assets and servicing activities.* If SBA undertakes the appointment of a receiver for, or the transfer of assets or servicing rights of an SBA Supervised Lender and/or injunctive or other equitable relief, SBA will follow the applicable procedures under federal law to obtain such remedies and to enforce the SBA Supervised Lender's consent and waiver in advance to those remedies.

* * * * *

■ 46. Amend § 120.1703 by revising paragraph (a)(4) to read as follows:

§ 120.1703 Qualifications to be a Pool Originator.

(a) * * *

(4) Is in good standing with SBA (as the SBA determines), and is Satisfactory with the Office of the Comptroller of the Currency (OCC) if it is a national bank, the Federal Deposit Insurance Corporation if it is a bank not regulated by the OCC, the Financial Institutions Regulatory Authority, if it is a member, the National Credit Union Administration if it is a credit union, as determined by SBA; and

* * * * *

■ 47. Revise § 120.1707 by revising the fifth sentence and adding a sixth sentence to read as follows:

§ 120.1707 Seller's retained Loan Interest.

* * * In addition, in order to complete such sale, Seller must have the purchaser of its rights to the Pool Loan execute an allonge to the Seller's First Lien Position 504 Loan Pool Guarantee Agreement in form acceptable to SBA, acknowledging and accepting all terms of the Seller's First Lien Position 504 Loan Pool Guarantee Agreement, and deliver the executed original allonge and a copy of the corresponding First Lien Position 504 Loan Pool Guarantee Agreement to the CSA. All Pool Loan payments related to a Seller Receipt and Servicing Retention Amount proposed for sale will be withheld by the CSA pending SBA acknowledgement of receipt of all executed documents required to complete the transfer.

Subpart K—[Removed and Reserved]

■ 48. Remove and reserve subpart K, consisting of §§ 120.1800 through 120.1900.

Dated: July 21, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–18044 Filed 8–8–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 391

[Docket No. FMCSA–2008–0362 and FMCSA–2015–0419]

Medical Review Board (MRB) Meeting: Public Meeting

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Advance notice of proposed rulemaking; announcement of a public MRB advisory committee meeting.

SUMMARY: FMCSA announces a meeting of its Medical Review Board (MRB) on Monday and Tuesday, August 22–23, 2016. The MRB will make recommendations to the Agency on the disposition of comments from medical professionals and associations, as well as safety advocacy, labor, and industry groups, to the Agency's and the Federal Railroad Administration's (FRA) Advance Notice of Proposed Rulemaking (ANPRM) of March 10, 2016, on safety-sensitive rail and commercial motor vehicle (CMV) drivers with moderate to severe Obstructive Sleep Apnea (OSA). Additionally, the MRB will review its previously issued report on OSA from 2012 to determine whether the report should be updated based on any changes to medical standards and practice or the comments received at the listening sessions and to the docket. Meetings are open to the public for their entirety, and the public will be allowed to comment during the proceedings.

TIMES AND DATES: The meeting will be held on Monday and Tuesday, August 22–23, 2016, from 9 a.m. to 4:30 p.m., Eastern Daylight Time (E.T.), at the FMCSA National Training Center, 1310 N. Courthouse Road, Arlington, VA, 6th floor. Copies of the task statement and an agenda for the entire meeting will be made available in advance of the meeting at *www.fmcsa.dot.gov/mrb.*

FOR FURTHER INFORMATION CONTACT: Ms. Shannon L. Watson, Senior Advisor to the Associate Administrator for Policy, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey

Avenue SE., Washington, DC 20590, (202) 366–5221, *mrb@dot.gov.*

Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Eran Segev at (617) 494–3174, *eran.segev@dot.gov*, by Wednesday, August 17.

SUPPLEMENTARY INFORMATION:

I. Background

The MRB is composed of five medical experts who each serve 2-year terms. Section 4116 of SAFETEA–LU requires the Secretary of Transportation, with the advice of the MRB and the chief medical examiner, to establish, review, and revise ''medical standards for operators of commercial motor vehicles that will ensure that the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely.'' The MRB operates in accordance with FACA under the terms of its charter, filed November 25, 2015.

II. Meeting Participation

Oral comments from the public will be heard during the meeting, subject to the discretion of the Chairman. Members of the public may submit written comments on the topics to be considered during the meeting by Wednesday, August 17, to Federal Docket Management System (FDMC) Docket Number FMCSA–2008–0362 and FMCSA–2015–0419 for the MRB using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140, Washington, DC, between 9 a.m. and 5 p.m., E.T. Monday through Friday, except Federal holidays.

Issued on: August 2, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–18726 Filed 8–8–16; 8:45 am]

BILLING CODE 4910–EX–P

Notices

Federal Register
Vol. 81, No. 153
Tuesday, August 9, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–SC–16–0055; SC16–900–2 NC]

Vegetable and Specialty Crop Marketing Orders; Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension and revision to the approved forms and information collection for marketing orders covering various vegetable and specialty crops.

DATES: Comments on this notice are due by October 11, 2016 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *www.regulations.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *www.regulations.gov.* All comments submitted in response to this notice will be included in the record and will be made available to the public. Please be advised that the identity of individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Andrew Hatch, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Room 1406–S, Washington, DC 20250–0237; Telephone: (202) 720–6862; Fax: (202) 720–8938; or Email: *andrew.hatch@ams.usda.gov.*

Small businesses may request information on this notice by contacting Antoinette Carter, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Room 1406–S, Washington, DC 20250–0237; Telephone (202) 720–2491; Fax: (202) 720–8938; or Email: *Antoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Vegetable and Specialty Crop Marketing Orders.

OMB Number: 0581–0178.

Expiration Date of Approval: April 30, 2017.

Type of Request: Extension and Revision of a currently approved information collection.

Abstract: Agricultural Marketing Service recently changed the name of the ''Fruit and Vegetable Program'' to the ''Specialty Crops Program.'' Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in specified production areas, to work together to solve marketing problems that cannot be solved individually. This notice covers the following marketing order citations: 7 CFR parts 932 (California olives), 945 (Idaho/Oregon potatoes), 946 (Washington potatoes), 948 (Colorado potatoes), 953 (North Carolina/Virginia potatoes), 955 (Vidalia onions), 956 (Walla Walla onions), 958 (Idaho/Oregon onions), 959 (South Texas onions), 966 (Florida tomatoes), 981 (California almonds), 982 (Oregon/Washington hazelnuts), 984 (California walnuts), 985 (Northwest spearmint oil), 987 (California dates), 989 (California raisins), 993 (California dried prunes), and 999 (Specialty Crop Import Regulation).

Marketing Order 947 (Oregon/California potatoes) has been terminated since the last renewal period. Currently, the following marketing orders are suspended at the respective industry's request, meaning their handling regulations and most of their information collection requirements are not active: 953 (North Carolina/Virginia potatoes); and 993 (California dried prunes). The North Carolina/Virginia potato marketing order, 953, is currently suspended and the industry will determine whether to reactivate or permanently terminate its marketing order by March 1, 2017. All North Carolina/Virginia potato forms were deleted from the previously approved OMB package. The California dried prune industry maintains the committee and marketing order 993, which work in partnership with State programs. In addition, the import regulation for California dried prunes, as contained in 7 CFR 999.200—Regulation governing the importation of prunes—is indefinitely suspended, effective January 17, 2009 (**Federal Register**, Vol. 74 No. 11).

Marketing order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Marketing orders are authorized under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674). The Secretary of Agriculture is authorized to oversee the marketing order operations and issue regulations recommended by a committee of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the marketing orders. Under the Act, marketing orders may authorize: Production and marketing research, including paid advertising; volume regulations; reserves, including pools and producer allotments; container regulations; and quality control. Assessments are levied on handlers regulated under the marketing orders. Section 8e of the Act requires imports of 14 commodities to meet certain standards. Included among these commodities are some covered in this forms package; olives, potatoes, onions, tomatoes, walnuts, dates, dried prunes, and raisins.

USDA requires several forms to be filed to enable the administration of each marketing order. These include forms covering the selection process for industry members to serve on a marketing order's committee or board

and ballots used in referenda to amend or continue marketing orders.

Under Federal marketing orders, producers and handlers are nominated by their peers to serve as representatives on a committee or board which administers each program. Nominees must provide information on their qualifications to serve on the committee or board. Qualified nominees are then appointed by the Secretary. Formal rulemaking amendments must be approved in referenda conducted by USDA and the Secretary. For the purposes of this action, ballots are considered information collections and are subject to the Paperwork Reduction Act. If a marketing order is amended, handlers are asked to sign an agreement indicating their willingness to abide by the provisions of the amended marketing order.

Some forms are required to be filed with the committee or board. The marketing orders and their rules and regulations authorize the respective commodities' committees and boards, the agencies responsible for local administration of the marketing orders, to require handlers and producers to submit certain information. Much of the information is compiled in aggregate and provided to the respective industries to assist in marketing decisions. The committees and boards have developed forms as a means for persons to file required information relating to supplies, shipments, and dispositions of their respective commodities, and other information needed to effectively carry out the purpose of the Act and their respective orders, and these forms are utilized accordingly.

The forms covered under this information collection require respondents to provide the minimum information necessary to effectively carry out the requirements of the marketing orders, and use of these forms is necessary to fulfill the intent of the Act as expressed in the marketing orders' rules and regulations.

The information collected is used only by authorized employees of the committees and authorized representatives of the USDA, including AMS, Specialty Crops Program's regional and headquarters' staff. Authorized committee or board employees are the primary users of the information and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.26 hours per response.

Respondents: Producers, handlers, processors, dehydrators, cooperatives, manufacturers, importers, and public members.

Estimated Number of Respondents: 17,750.

Estimated Number of Responses: 97,129.29.

Estimated Number of Responses per Respondent: 5.47.

Estimated Total Annual Burden on Respondents: 25,219.72 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0178 OMB Vegetable and Specialty Crop Marketing Orders, and be sent to the USDA in care of the Docket Clerk at the address above. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

AMS is committed to complying with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A 60-day comment period is provided to allow interested persons to respond to the notice.

Dated: August 4, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–18848 Filed 8–8–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Distribution Program: Value of Donated Foods From July 1, 2016 Through June 30, 2017

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the national average value of donated foods or, where applicable, cash in lieu of donated foods, to be provided in school year 2017 (July 1, 2016 through June 30, 2017) for each lunch served by schools participating in the National School Lunch Program (NSLP), and for each lunch and supper served by institutions participating in the Child and Adult Care Food Program (CACFP).

DATES: *Effective date:* July 1, 2016.

FOR FURTHER INFORMATION CONTACT: Polly Fairfield, Program Analyst, Policy Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594, or telephone (703) 305–2680.

SUPPLEMENTARY INFORMATION: These programs are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555 and 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR 415.9)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice was reviewed by the Office of Management and Budget under Executive Order 12866.

National Average Minimum Value of Donated Foods for the Period July 1, 2016 Through June 30, 2017

This notice implements mandatory provisions of sections 6(c) and 17(h)(1)(B) of the Richard B. Russell National School Lunch Act (the Act) (42 U.S.C. 1755(c) and 1766(h)(1)(B)). Section 6(c)(1)(A) of the Act establishes the national average value of donated food assistance to be given to States for each lunch served in the NSLP at 11.00 cents per meal. Pursuant to section 6(c)(1)(B), this amount is subject to annual adjustments on July 1 of each year to reflect changes in a three-month

average value of the Producer Price Index for Foods Used in Schools and Institutions for March, April, and May each year (Price Index). Section 17(h)(1)(B) of the Act provides that the same value of donated foods (or cash in lieu of donated foods) for school lunches shall also be established for lunches and suppers served in the CACFP. Notice is hereby given that the national average minimum value of donated foods, or cash in lieu thereof, per lunch under the NSLP (7 CFR part 210) and per lunch and supper under the CACFP (7 CFR part 226) shall be 23.00 cents for the period July 1, 2016 through June 30, 2017.

The Price Index is computed using five major food components in the Bureau of Labor Statistics Producer Price Index (cereal and bakery products; meats, poultry and fish; dairy; processed fruits and vegetables; and fats and oils). Each component is weighted using the relative weight as determined by the Bureau of Labor Statistics. The value of food assistance is adjusted each July 1 by the annual percentage change in a three-month average value of the Price Index for March, April, and May each year. The three-month average of the Price Index decreased by 3.55 percent from 209.20 for March, April, and May of 2015, as previously published in the **Federal Register**, to 201.77 for the same three months in 2016. When computed on the basis of unrounded data and rounded to the nearest one-quarter cent, the resulting national average for the period July 1, 2016 through June 30, 2017 will be 23.00 cents per meal. This is a decrease of three quarters of a cent from the school year 2016 (July 1, 2015 through June 30, 2016) rate.

Authority: Sections 6(c)(1)(A) and (B), 6(e)(1), and 17(h)(1)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755(c)(1)(A) and (B) and (e)(1), and 1766(h)(1)(B)).

Dated: August 3, 2016.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2016–18833 Filed 8–8–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Sites

AGENCY: White Mountain National Forest, USDA Forest Service.

ACTION: Notice.

SUMMARY: The White Mountain National Forest proposes to add Zealand Picnic Area to the Recreation Fee Program. The White Mountain Pass, which covers 27 day use sites on the Forest, will also cover Zealand Picnic Area in the pass. Fees are determined based on the level of amenities and services provided, cost of operation, maintenance, and market assessment. Funds from fees will be used for the continued operation and maintenance of the sites.

National recreation passes such as the Interagency Annual Pass, Senior Pass, Access Pass, or White Mountain National Forest Annual Pass would be valid for day use fees at these sites.

DATES: Comments on the proposal will be accepted through October 11, 2016. Fees for Zealand Picnic Area will go into effect spring of 2017 pending a recommendation from the Eastern Region Recreation Resource Advisory Committee (RRAC).

ADDRESSES: Forest Supervisor, White Mountain National Forest, 71 White Mountain Drive, Campton, NH 03223.

FOR FURTHER INFORMATION CONTACT: Marianne Leberman, Recreation & Wilderness Program Leader (603) 536–6236. Information about the proposed fee changes can also be found on the White Mountain National Forest Web site: *http://www.fs.usda.gov/whitemountain.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. Prior to these fees going into effect, the White Mountain National Forest will present this proposal to the Eastern Region Recreation Resource Advisory Committee (RRAC). The Federal Lands Recreation Enhancement Act requires a recommendation from the Eastern Region Recreation Resource Advisory Committee (RRAC) prior to a decision and implementation.

Dated: August 1, 2016.

Thomas G. Wagner,

White Mountain National Forest Supervisor.

[FR Doc. 2016–18832 Filed 8–8–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee (LTFAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee (Committee) will meet in South Lake Tahoe, CA. The Committee is established consistent with the Federal Advisory Committee Act of 1972. Additional information concerning the Committee, including meeting summary/minutes, can be found by visiting the Committee's Web site at: *http://www.fs.usda.gov/goto/ltbmu/LTFAC.* The summary/minutes of the meetings will be posted within 21 days of the meetings.

DATES: The meeting will be held on August 26, 2016, from 10:00 to 12:00 p.m. All meetings are subject to cancellation. For updated status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Forest Service, Lake Tahoe Basin Management Unit, Emerald Bay Conference Room, 35 College Drive, South Lake Tahoe, California. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses, when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Forest Service, 35 College Drive, South Lake Tahoe, California. Please call ahead at 530–543–2774 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Karen Kuentz, Lake Tahoe Basin Management Unit, Forest Service, 35 College Drive, South Lake Tahoe, California 96150, by phone at 530–543–2774, or by email at *kkuentz@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to provide:

1. Presentation on past LTFAC SNPLMA project approval
2. Presentation on SNPLMA secondary projects on current list
3. Agreement process for LTFAC
4. LTFAC prep for Lake Tahoe Summit

The meeting is open to the public. Anyone who would like to bring related matters to the attention of the Committee may file written statements with the Committee staff before the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should submit a request in writing by June 2, 2016. Written comments and time requests for oral comments must be

sent to Karen Kuentz, Forest Service, Lake Tahoe Basin Management Unit, 35 College Drive, South Lake Tahoe, California 96150, or by email at *kkuentz@fs.fed.us,* or via facsimile to 530–543–2693.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case-by-case basis.

Dated: August 1, 2016.

Jeff Marsolais,

Forest Supervisor.

[FR Doc. 2016–18838 Filed 8–8–16; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[7/1/2016 through 8/4/2016]

Firm name	Firm address	Date accepted for investigation	Product(s)
Brighton NC Machine Corporation	7300 Whitmore Lake Road, Brighton, MI 48116.	7/27/2016	The firm manufactures oilpans and other precision machined engine and drivetrain components.
Potomac Electric Corporation	One Westinghouse Plaza, Boston, MA 02136.	8/2/2016	The firm manufactures innovative electric motors, control electronics and complex electromechanical systems for industrial and military applications.
John R. Bromiley Company, Inc	105 South Bristol Road, Chalfont, PA 18914.	8/2/2016	The firm manufactures parts that are metal or plastic, machined to customer specifications.
Mack Hils, Inc	544 North Avenue, Moberly, MO 65270.	8/2/2016	The firm produces metal products fabrication, metal stamping and precision machining.
Bilco Tools, Inc	107 Clendenning Road, Houma, LA 70363.	8/3/2016	The firm manufactures handling tools and wellbore clean-up tools for the oil industry.
Capital, LLC d/b/a Freeman Manufacturing Company.	900 West Chicago Road, Sturgis, MI 49091.	8/3/2016	The firm manufacturers support garments, medical compression stockings, prosthetic supplies, and traction equipment.
Automation Engineering Company, LLC.	110 Smith Road, Greenville, SC 29615.	8/3/2016	The firm designs, manufactures and installs complete industrial automated equipment.
sevenOKs, Inc	3539 Monroe Street, La Porte, IN 46350.	8/4/2016	The firm manufactures insulated bags for food storage and delivery as well as bags for storage and transport of a wide variety of manufactured articles.
SuperTrapp Industries, Inc	4540 West 160th Street, Cleveland, OH 44135.	8/4/2016	The firm manufacturers motorcycle parts and accessories such as exhaust and brake components.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: August 4, 2016.

Miriam Kearse,

Lead Program Analyst.

[FR Doc. 2016–18851 Filed 8–8–16; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2008]

Expansion of Foreign-Trade Zone 225 Under Alternative Site Framework Springfield, Missouri

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR Sec. 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the City of Springfield Airport Board, grantee of Foreign-Trade Zone 225, submitted an application to the Board (FTZ Docket B–51–2015, docketed August 10, 2015, amended February 19, 2016) for authority to expand the zone under the ASF to include a new magnet site (proposed Site 4) in Neosho, Missouri, adjacent to the Springfield Customs and Border Protection port of entry;

Whereas, notice inviting public comment was given in the **Federal Register** (80 FR 48806–48807, August 14, 2015) and the amended application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, Therefore, the Board hereby orders:

The amended application to expand FTZ 225 under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone, and to an ASF sunset provision for magnet sites that would terminate authority for Site 4 if not activated within five years from the month of approval.

Signed at Washington, DC, this 29th day of July, 2016.

Ronald K. Lorentzen,

Acting Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2016–18791 Filed 8–8–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2009]

Expansion of Foreign-Trade Zone 149 Under Alternative Site Framework Freeport, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR Sec. 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, Port Freeport, grantee of Foreign-Trade Zone 149, submitted an application to the Board (FTZ Docket B–65–2015, docketed September 22, 2015) for authority to expand existing Site 1 of the zone under the ASF to include additional acreage in Freeport, Texas, adjacent to the Freeport Customs and Border Protection port of entry;

Whereas, notice inviting public comment was given in the **Federal Register** (80 FR 58464, September 29, 2015) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 149—Site 1 under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone.

Signed at Washington, DC, this 29th day of 2016.

Ronald K. Lorentzen,

Acting Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2016–18784 Filed 8–8–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2011]

Reorganization of Foreign-Trade Zone 103 Under Alternative Site Framework Grand Forks, North Dakota

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR Sec. 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the Grand Forks Regional Airport Authority, grantee of Foreign-Trade Zone 103, submitted an application to the Board (FTZ Docket B–27–2016, docketed May 2, 2016) requesting to reorganize under the ASF with a service area of Grand Forks County, North Dakota, in and adjacent to the Grand Forks U.S. Customs and Border Protection port of entry, and to remove existing Sites 1, 2 and 3 from the zone;

Whereas, notice inviting public comment was given in the **Federal Register** (81 FR 27410–27411, May 6, 2016) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, Therefore, the Board hereby orders:

The application to reorganize FTZ 103 under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and to the Board's standard 2,000-acre activation limit for the zone.

Signed at Washington, DC, this 29th day of July 2016.

Ronald K. Lorentzen,

Acting Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2016–18789 Filed 8–8–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE74

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Waterfront Improvement Projects

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received a request from the U.S. Department of the Navy (Navy) for authorization to take marine mammals incidental to construction activities as part of waterfront improvement projects at several berths. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting public comment on its proposal to issue an incidental harassment authorization (IHA) to the Navy to incidentally take marine mammals, by Level B harassment only, during the specified activity at Portsmouth Naval Shipyard (the Shipyard) in Kittery, Maine.

DATES: Comments and information must be received no later than September 8, 2016.

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910, and electronic comments should be sent to *ITP.Pauline@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to

electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted to the Internet at *http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm* without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Rob Pauline, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of the Navy's application and supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the Internet at: *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

National Environmental Policy Act

The Navy has prepared a draft Environmental Assessment (*Waterfront Improvement Projects, Portsmouth Naval Shipyard, Kittery, ME*) in accordance with the National Environmental Policy Act (NEPA) and the regulations published by the Council on Environmental Quality. NMFS will independently evaluate the Environmental Assessment (EA) and determine whether or not to adopt it. We may prepare a separate NEPA analysis and incorporate relevant portions of Navy's EA by reference. Information in the Navy's application, EA, and this notice collectively provide the environmental information related to proposed issuance of this IHA for public review and comment. These documents will be posted at the foregoing Web site. We will review all comments submitted in response to this notice as we complete the NEPA process, including a decision of whether to sign a Finding of No Significant Impact (FONSI), prior to a final decision on the incidental take authorization request.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On Wednesday February 17, 2016, NMFS received an application from the Navy for the taking of marine mammals incidental to Waterfront Improvement Projects. NMFS determined that the application was adequate and complete on April 1, 2016. The Navy is proposing to restore and modernize waterfront infrastructure associated with Dry Docks 1 and 3 at the Shipyard in Kittery, York County, Maine. The proposed action would include two waterfront improvement projects, structural repairs to Berths 11, 12, and 13, and replacement of the Dry Dock 3 caisson. The waterfront improvement projects would be constructed between October 2016 and October 2022, with in-water work expected to begin no earlier than January 2017. The requested IHA would run from January 1, 2017 through December 31, 2017.

The use of vibratory and impact pile driving for pile installation and removal as well as drilling is expected to produce underwater sound at levels that have the potential to result in behavioral harassment of marine mammals. The term "pile driving" throughout this document shall include vibratory driving, impact pile driving, vibratory pile extraction as well as pile drilling unless unless specified otherwise. Species with the potential to be present during the project timeframe include harbor porpoise (*Phocoena phocoena*), gray seal (*Halichoerus grypus*), harbor seal (*Phoca vitulina*), hooded seal (*Crystphora cristata*) and harp seal (*Pagophilus groenlandicus*).

Description of the Specified Activity

Overview

The U.S. Department of the Navy (Navy) is proposing to restore and modernize waterfront infrastructure associated with Dry Docks 1 and 3 at the Shipyard in Kittery, York County, Maine (See Figure 1–1 in the Application). The proposed action would include two waterfront improvement projects, structural repairs to Berths 11, 12, and 13 and replacement of the Dry Dock 3 caisson.

The purpose of the proposed action is to modernize and maximize dry dock capabilities for performing current and future missions efficiently and with maximum flexibility. The need for the proposed action is to correct deficiencies associated with the pier structure at Berths 11, 12, and 13 and the Dry Dock 3 caisson and concrete seats and ensure that the Shipyard can continue to support its primary mission to service, maintain, and overhaul submarines. By supporting the Shipyard's mission, the proposed action would assist in meeting the larger need for the Navy to provide capabilities for training and equipping combat-capable naval forces ready to deploy worldwide. Proposed activities included as part of the Waterfront Improvement Projects with potential to affect marine mammals within the waterways adjacent to the Shipyard include vibratory and impact pile driving as well as pile drilling operations in the project area.

Dates and Duration

In-water construction associated with the Proposed Action would occur in phases over a six-year construction period. In-water construction is scheduled to begin in January 2017 and be completed by October 2022. This application is for the first year of in-water construction, from January 1, 2017 to December 31, 2017. No seasonal limitations would be imposed on the construction timeline. Construction schedules for in-water work at Berth 11 are under development and subject to change based on operational

requirements. Therefore, this IHA application covers all in-water construction planned for Berth 11 structural repairs. The Navy intends to apply for sequential IHAs to cover each of the subsequent years of construction.

Table 1 summarizes the in-water construction activities including pile extraction, driving, and drilling, scheduled to take place during the timeframe covered by this IHA application. Note that pile driving days are not necessarily consecutive. Also note that certain activities may occur at the same time, decreasing the total number of pile driving days, thus making the total days described below a conservative estimate. Total driving time will be approximately 72 days which includes the installation of 327 piles and removal of 141 piles.

TABLE 1—ACTIVITY SUMMARY FOR YEAR 1 OF THE BERTHS 11, 12, AND 13 STRUCTURAL REPAIRS

Activity/method	Timing	Number of days	Pile type	Number of piles installed	Number of piles extracted
Extract timber piles/vibratory hammer	January 2017 to December 2017.	[1] 10	15-inch timber pile		77
Install temporary sister piles for trestle system/vibratory hammer.	January 2017 to December 2017.	[2] 16	14-inch steel H-type	64	
Install permanent king piles for bulkhead/auger drilling.	January 2017 to December 2017.	10	36-inch steel H-type piles.	94	
Install steel sheet-pile bulkhead/vibratory hammer (sheet piles and sheet pile returns).	January 2017 to December 2017.	6	24-inch steel sheet-piles.	112	
Install permanent sister piles/impact hammer.	January 2017 to December 2017.	[2] 13	14-inch steel H-type	50	
Install timber dolphin	January 2017 to January 2017.	[1] 1	15-inch timber piles	7	
Extract temporary sister piles for trestle system/vibratory hammer.	January 2017 to December 2017.	[2] 16	14-inch steel H-type		64
Totals		72		327	141

[1] Estimate based on assumption of 30 minutes to drive each pile and 30-minute transition and set up time, resulting in one pile per hour and eight piles per day (ICF Jones and Strokes and Illingworth and Rodkin, Inc. 2012).

[2] Estimate based on assumption of a one-hour transition and set up time, resulting in one pile per two hours and four piles per day (ICF Jones and Strokes and Illingworth and Rodkin, Inc. 2012).

Note: The Navy provided the following information in response to technical questions:

King Piles—estimate of 10 per day.

Sheet piles—estimate of 20 per day, based on 20 piles in 8 hours (*i.e.,* one day) because they will be installed two at a time.

Specified Geographic Region

The Shipyard is located along the Piscataqua River in Kittery, Maine. The Shipyard occupies the whole of Seavey Island, encompassing 278 acres on what were originally five separate islands (Seavey, Pumpkin, Dennett's, Clarks, and Jamaica). Over the past 200 years, as a result of expansion from land-making activity, four of these islands (Seavey, Pumpkin, Dennett's, and Jamaica) were consolidated into one large island, which kept the name Seavey Island. Clarks Island is now attached to Seavey Island by a causeway. Seavey Island is located in the lower Piscataqua River approximately 547 yards from its southwest bank, 219 yards from its north bank, and approximately 2.5 miles from the mouth of the river.

Detailed Description of Activities

The Navy's application focuses primarily on the in-water construction activities that will occur during the first year of construction, including completion of the king pile and concrete shutter panel bulkhead at Berth 11. Additional applications will be submitted for each subsequent year of in-water construction at Berths 11, 12, and 13 as well as for the replacement of the Dry Dock 3 caisson.

Pile Driving Operations

Piles of differing sizes will be utilized during construction activities including 25-inch steel sheet piles driven by vibratory hammer at Berth 11; 14-inch steel H-type piles driven using impact hammer at Berth 11; 15-inch timber piles installed via vibratory hammer to reconstruct dolphins at the corner of Berth 11; and 36-inch steel H-type piles at Berth 11. Additionally 14-inch steel H-type piles would be used to align and construct the trestle that would be extracted using vibratory hammer at Berth 11 and 15-inch timber fender piles, which would be extracted using a vibratory hammer at Berth 11 and the timber dolphin at the corners of Berths 11 and 12.

The number of piles that can be driven per day varies for different project elements and is subject to change based on site conditions at the time. At the beginning of the in-water work, existing timber piles would be removed from the berth faces and the timber dolphin at the western end of the berth, and the contractor either would construct a temporary construction trestle or place a jack-up barge alongside the berths to provide additional construction workspace. Pile driving and extraction would also be needed to construct and disassemble the temporary construction trestle if the construction contractor selects this method over use of a jack-up barge, which would require no pile driving. The trestle system has been included in this analysis in order to model a conservative, worst-case scenario. If a jack-up barge is used instead of a trestle system, less pile driving will be needed, resulting in fewer marine mammal takes than predicted in this application.

For the proposed king pile and concrete shutter panel bulkhead (see Figures 2–1 and 2–2 in Application), the contractor would likely create templates and work in increments along the berth from the trestle or jack-up barge. For example, an approximately 50-foot-long template would allow installation of about 10 king piles and 20 sheet piles (along segments of the berths where sheet piles would be installed). The work would consist of setting a template (including temporary piles and horizontal members), which might take one or two days. Then the contractor

would drill the rock sockets, which could take about one day per socket. King piles would be regularly spaced along the berths and grouted into sockets drilled into the bedrock (*i.e.*, "rock-socketed").

The concrete shutter panels would then be installed in stacks between the king piles along most of the length of Berth 11. Installation of the concrete piles is not included in the noise analysis because no pile driving would be required. Along an approximately 16-foot section at the eastern end of Berth 11A and an additional 101 feet between Berths 11A and 11B, the depth to bedrock is greater, thus allowing a conventional sheet-pile bulkhead to be constructed. The steel sheet-piles would be driven to bedrock using a vibratory hammer. Sheet piles installed with a vibratory hammer also would be used to construct "returns," which would be shorter bulkheads connecting the new bulkheads to the existing bulkhead under the pier. Installation of the sheeting with a vibratory hammer is estimated to take less than one hour per pair of sheets. The contractor would probably install two sheets at a time and so the time required install the sheeting (10 pairs = 20 sheets) using vibratory hammers would only be about 8 hours per 10 pairs of sheets. Time requirements for all other pile types were estimated based on information compiled from ICF Jones and Strokes and Illingworth and Rodkin, Inc. (2012).

If sufficient construction funds are available, the Navy may install a king pile and concrete shutter panel bulkhead at Berth 11C as part of Phase 1. The bulkhead would extend from the western end of Berth 11B to the southern end of Berth 12. The in-water construction process would be the same as the process described above. The analysis in this application includes construction at Berth 11C. Once the Berth 11 bulkheads are complete, the timber dolphins at the western end of the berth would be replaced with a similar dolphin constructed of approximately seven piles.

Additional in-water work would be required to install steel H-type sister piles at the location of the inboard portal crane rail beam at Berth 11, including Berth 11C. The sister piles would provide additional support for the portal crane rail system and restore its load-bearing capacity. The sister piles would be driven into the bedrock below the pier, in water generally less than 10 feet deep, using an impact hammer. The timing of this work depends on operational schedules at the berths. The sister piles may be installed either before or after the bulkheads are constructed.

Description of Marine Mammals in the Area of the Specified Activity

Five marine mammal species, including one cetacean and four pinnipeds, may inhabit or transit the waters near the Shipyard in the lower Piscataqua River during the specified activity. These include the harbor porpoise (*Phocoena phocoena*), Gray seal (*Halichoerus grypus*), harbor seal (*Phoca vitulina*), hooded seal (*Crystphora cristata*), and harp seal (*Pagophilus groenlandicus*). None of the marine mammals that may be found in the Piscataqua River are listed under the Endangered Species Act (ESA). Table 2 lists the marine mammal species that could occur in the vicinity of the Shipyard and their estimated densities within the Project area. As there are not specific density data for any of the species in the Piscataqua River, density data from the nearshore zone outside the mouth the Piscataqua River in the Atlantic Ocean have been used instead. Therefore, it can be assumed that the density estimates presented here for each species are conservative and much higher than densities that would typically be expected in an estuarine environment such as the lower Piscataqua River in the vicinity of the Shipyard.

TABLE 2—MARINE MAMMAL SPECIES POTENTIALLY PRESENT IN THE PISCATAQUA RIVER IN THE VICINITY OF THE SHIPYARD

Species	Stock(s) abundance [1]	Relative occurrence in Piscataqua River	Season(s) of occurrence	Approximate density in the vicinity of the project area (individuals per km^2) [3]			
				Winter	Spring	Summer	Fall
Harbor Porpoise, *Phocoena phocoena*, Gulf of Maine/Bay of Fundy stock.	79,883 (CV = 0.32)	Occasional use	Spring to Fall (April to December). [4]	1.2122	1.1705	0.7903	0.9125
Gray Seal, *Halichoerus grypus*, Western North Atlantic stock.	331,000 [2]	Common	Year-round	0.2202	0.2202	0.2202	0.2202
Harbor Seal, *Phoca vitulina*, Western North Atlantic stock.	75,834 (CV = 0.15)	Common	Year-round	0.1998	0.1998	0.1998	0.1998
Hooded Seal, *Crystphora cristata*, Western North Atlantic stock.	592,100 [2]	Rare	Winter to Spring (January–May).	N/A	N/A	N/A	N/A
Harp Seal, *Pagophilus groenlandicus*, Western North Atlantic stock.	7,100,000	Rare	Winter to Spring (January–May).	0.0125	0.0125	0.0125	0.0125

Source: Waring *et al.*, 2015, except where noted.

Notes:

[1] No population estimate is available for the U.S. western North Atlantic stock; therefore, the best population estimates are those for the Canadian populations as reported in Waring *et al.*, 2015.

[2] Source: Waring *et al.*, 2007. The population estimate for the Western North Atlantic hooded seal population was not updated in Waring *et al.*, 2015.

[3] Density data are taken from the Navy Marine Species Density Database (Crain 2015; Krause 2015). It should be noted that these data overestimate the potential species density in the Piscataqua River. The Navy Marine Species Density Database data presented in the table are based on a relative environmental suitability study and represent data with low confidence. These data are generally used for broad-scale offshore activities; however, due to a lack of any other data within the general Project area, these data are presented as the best available data for the Piscataqua River.

[4] Densities shown for seasons when each species would not be likely to occur in the river.

Key: CV = coefficient of variation. km^2 = square kilometer.

We have reviewed the Navy's detailed species descriptions, including life history information, for accuracy and completeness and refer the reader to Section 3 of the Navy's Application instead of reprinting the information here. Please also refer to NMFS' Web site (*www.nmfs.noaa.gov/pr/species/mammals*) for generalized species accounts.

Harbor Porpoise

Harbor porpoises are found commonly in coastal and offshore waters of both the Atlantic and Pacific Oceans. In the western North Atlantic, the species is found in both U.S. and Canadian waters. More specifically, the species can be found between West Greenland and Cape Hatteras, North Carolina (NOAA Fisheries Service

2014a). Based on genetic analysis, it is assumed that harbor porpoises in the U.S. and Canadian waters are divided into four populations, as follows: (1) Gulf of St. Lawrence; (2) Newfoundland; (3) Greenland; and (4) Gulf of Maine/Bay of Fundy. For management purposes in U.S. waters, harbor porpoises have been divided into 10 stocks along both the East and West Coasts. Of those 10 stocks, only one, the Gulf of Maine/Bay of Fundy stock, is found along the U.S. East Coast, and thus only individuals from this stock could be found in the Project area. The species is primarily found over the Continental Shelf in waters less than approximately 500 feet deep (Waring *et al.*, 2014). In general, the species is commonly found in bays, estuaries, and harbors (NOAA Fisheries Service 2014a).

Line-transect surveys have been conducted in the Gulf of Maine between 1991 and 2011. Based on the 2011 aerial surveys, the best abundance estimate for the Gulf of Maine/Bay of Fundy stock of harbor porpoise is 79,883 animals (CV = 0.32). The aerial surveys included central Virginia to the lower Bay of Fundy. The minimum population estimate is 61,415 animals (Waring *et al.*, 2014). Because no trend analysis has been conducted for this stock, no population trend is available. A Bayesian population model was used to determine the currently accepted population growth rate. Fertility data and age-at-death data from stranded animals and animals taken in gillnets were used for the model (Waring *et al.*, 2014). It was then determined that the potential natural growth rate for the Gulf of Maine/Bay of Fundy stock of harbor porpoises was 0.046 (Waring *et al.*, 2014). The harbor porpoise is likely the most abundant cetacean within the Piscataqua River (Smith n.d.)

Gray Seal

Gray seals, which are members of the "true seal" family (*Phocidae*), are a coastal species that generally remains within the Continental Shelf region. Gray seals can be found on both sides of the North Atlantic. Within this area, the species is split into three primary populations: (1) Eastern Canada, (2) northwestern Europe, and (3) the Baltic Sea (Katona *et al.*, 1993). Gray seals within U.S. waters are considered the western North Atlantic stock and are expected to be part of the eastern Canadian population (Waring *et al.*, 2014). In U.S. waters, year-round breeding of approximately 400 animals has been documented on areas of outer Cape Cod and Mukeget Island in Massachusetts. In general, this species can be found year-round in the coastal waters of the Gulf of Maine (Waring *et al.*, 2014).

There are currently no population estimates for the western North Atlantic gray seal stock (Waring *et al.*, 2014). However, estimates are available for portions of the total population for certain time periods (Waring *et al.*, 2014). For example, between 1993 and 2004, the Gray seal population in Canada was estimated at between 144,000 and 223,220 individuals. This estimate was based on three separate surveys and also depended on the population-estimation model that was used (Mohn and Bowen 1996; Department of Fisheries and Oceans 2003; Trzcinski *et al.*, 2005). The most recent Canadian gray seal population estimate is 331,000. This estimate is based on surveys conducted during 2012 in the Gulf of St. Lawrence, Nova Scotia Eastern Shore, and Sable Island (Waring *et al.*, 2014). In U.S. waters, gray seals are known to pup at three separate locations: (1) Muskeget Island, Massachusetts; (2) Green Island, Maine; and (3) Seal Island, Maine. Surveys of these areas indicate that in these colonies pup production is increasing, as are the colony populations. General population increases in U.S. waters are likely a result of this natural increase and immigration of individuals from Canadian populations (Waring *et al.*, 2014).

Harbor Seal

Harbor seals are also members of the true seal family (*Phocidae*) and can be found in nearshore waters along both the North Atlantic and North Pacific coasts, generally at latitudes above 30° N. (Burns 2009). In the western Atlantic Ocean, the harbor seal's range extends from the eastern Canadian Arctic to New York; however, they can be found as far south as the Carolinas (Waring *et al.*, 2014). In New England, the species can be found in coastal waters year-round (Waring *et al.*, 2014). Overall, there are five recognized subspecies of harbor seal, two of which occur in the Atlantic Ocean. The western Atlantic harbor seal (*Phoca vitulina concolor*) is the subspecies likely to occur in the project area. There is some uncertainly about the overall population stock structure of harbor seals in the western North Atlantic Ocean. However, it is theorized that harbor seals along the eastern U.S. and Canada are all from a single population (Temte *et al.*, 1991).

An aerial abundance survey was conducted in 2012 during the pupping season along the entire Maine coast. As a result of this survey, the best estimate of abundance for the western North Atlantic stock of harbor seal was 70,142 animals. The minimum population was estimated as 55,409 animals (also based on the 2012 aerial abundance survey). No trend analysis has been conducted for this species, likely because of the long interval between the 2012 survey and the previous 2001 survey and the somewhat imprecise abundance estimates that were generated from them. In the Piscataqua River, harbor seals are the most abundant pinniped species (Smith n.d.).

Hooded Seal

Hooded seals are also members of the true seal family (*Phocidae*) and are generally found in deeper waters or on drifting pack ice. The world population of hooded seals has been divided into three stocks, which coincide with specific breeding areas, as follows: (1) Northwest Atlantic, (2) Greenland Sea, and (3) White Sea (Waring *et al.*, 2007). The hooded seal is a highly migratory species, and its range can extend from the Canadian arctic to Puerto Rico. In the U.S. waters, the species has an increasing presence in the coastal waters between Maine and Florida (Waring *et al.*, 2007). In the United States, they are considered members of the western North Atlantic stock and generally occur in New England waters from January through May and further south in the summer and fall seasons (Waring *et al.*, 2007).

Population abundance of hooded seals in the western North Atlantic is derived from pup production estimates. These estimates are developed from whelping pack surveys. The most recent population estimate in the western North Atlantic was derived in 2005. There have been no recent surveys conducted or population estimates developed for this species. The 2005 best population estimate for hooded seals is 592,100 individuals, with a minimum population estimate of 512,000 individuals (Waring *et al.*, 2007). Currently, not enough data are available to determine what percentage of this estimate may represent the population within U.S. waters. A population trend also cannot be developed for this species due to a lack of sufficient data. Hooded seals are known to occur in the Piscataqua River; however, they are not as abundant as the more commonly observed harbor seal. Anecdotal sighting information indicates that two hooded seals were observed from the Shipyard in August 2009, but no other observations have been recorded (Trefry November 20, 2015).

Harp Seal

Harp seals are also members of the true seal family and classified into three stocks, which coincide with specific pupping sites on pack ice, as follows: (1) Eastern Canada, including the areas off the coast of Newfoundland and Labrador and the area near the Magdalen Islands in the Gulf of St. Lawrence; (2) the West Ice off eastern Greenland, and (3) the ice in the White Sea off the coast of Russia (Waring *et al.*, 2014). The harp seal is a highly migratory species, and its range can extend from the Canadian arctic to New Jersey. In U.S. waters, the species has an increasing presence in the coastal waters between Maine and New Jersey (Waring *et al.*, 2014). In the United States, they are considered members of the western North Atlantic stock and generally occur in New England waters from January through May in the winter and spring (Waring *et al.*, 2014). The observed influx of harp seals and geographic distribution in New England to mid-Atlantic waters is based primarily on strandings and secondarily on fishery bycatch.

Population abundance of harp seals in the western North Atlantic is derived from aerial surveys and mark-recapture (Waring *et al.*, 2014). The most recent population estimate in the western North Atlantic was derived in 2012 from an aerial harp seal survey. The 2012 best population estimate for hooded seals is 7.1 million individuals (Waring *et al.*, 2014). Currently, not enough data are available to determine what percentage of this estimate may represent the population within U.S. waters. A population trend also cannot be developed for this species due to a lack of sufficient data, as recent increases in strandings may not be indicative of population size. Harp seals are known to occur in the Piscataqua River; however, they are not as abundant as the more commonly observed harbor seal (Crain 2015).

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that stressors, (*e.g.*, pile driving,) and potential mitigation activities, associated with the proposed waterfront improvement project may impact marine mammals and their habitat. The "Estimated Take by Incidental Harassment" section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The "Negligible Impact Analysis" section will include the analysis of how this specific activity will impact marine mammals and will consider the content of this section, the "Estimated Take by Incidental Harassment" section, and the "Proposed Mitigation" section to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks. In the following discussion, we provide general background information on sound and marine mammal hearing before considering potential effects to marine mammals from sound produced by pile driving.

Description of Sound Sources

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks of a sound wave; lower frequency sounds have longer wavelengths than higher frequency sounds and attenuate (decrease) more rapidly in shallower water. Amplitude is the height of the sound pressure wave or the 'loudness' of a sound and is typically measured using the decibel (dB) scale. A dB is the ratio between a measured pressure (with sound) and a reference pressure (sound at a constant pressure, established by scientific standards). It is a logarithmic unit that accounts for large variations in amplitude; therefore, relatively small changes in dB ratings correspond to large changes in sound pressure. When referring to sound pressure levels (SPLs; the sound force per unit area), sound is referenced in the context of underwater sound pressure to 1 microPascal (μPa). One pascal is the pressure resulting from a force of one newton exerted over an area of one square meter. The source level (SL) represents the sound level at a distance of 1 m from the source (referenced to 1 μPa). The received level is the sound level at the listener's position. Note that all underwater sound levels in this document are referenced to a pressure of 1 μPa and all airborne sound levels in this document are referenced to a pressure of 20 μPa.

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Rms is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Rms accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in all directions away from the source (similar to ripples on the surface of a pond), except in cases where the source is directional. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound. Ambient sound is defined as environmental background sound levels lacking a single source or point (Richardson *et al.*, 1995), and the sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.*, waves, earthquakes, ice, atmospheric sound), biological (*e.g.*, sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.*, vessels, dredging, aircraft, construction). A number of sources contribute to ambient sound, including the following (Richardson *et al.*, 1995):

- *Wind and waves:* The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient noise for frequencies between 200 Hz and 50 kHz (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Surf noise becomes important near shore, with measurements collected at a distance of 8.5 km from shore showing an increase of 10 dB in the 100 to 700 Hz band during heavy surf conditions.
- *Precipitation:* Sound from rain and hail impacting the water surface can become an important component of total noise at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times.
- *Biological:* Marine mammals can contribute significantly to ambient noise levels, as can some fish and shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz.

• *Anthropogenic:* Sources of ambient noise related to human activity include transportation (surface vessels and aircraft), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies. Shipping noise typically dominates the total ambient noise for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly (Richardson *et al.*, 1995). Sound from identifiable anthropogenic sources other than the activity of interest (*e.g.*, a passing vessel) is sometimes termed background sound, as opposed to ambient sound.

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise "ambient" or "background" sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.*, 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In the vicinity of the Project area, the average broadband ambient underwater noise levels are commonly 52.8 to 80.5 dB SEL re 1μPa with substantially higher maximum peak readings (79.9 to 103.9 L_{peak} dB re 1μPa) due to passing boats and industrial noise (ESS Group, Inc. 2015). However, boat traffic was limited the day of the study; three boats passed at a distance greater than 66 yards from site. Therefore, given the short duration of the measurements, it would be difficult to determine whether vessel noise associated with the Proposed Action would add greatly to the existing background vessel noise in the lower Piscataqua River. However, based on these measurements, it cannot be assumed that the sound produced by vibratory pile driving would be completely masked by background vessel noise, especially in areas close to the vibratory hammer.

There are two general categories of sound types: Impulse and non-pulse. Vibratory pile driving is considered to be continuous or non-pulsed while impact pile driving is considered to be an impulse or pulsed sound type. The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.*, Ward, 1997 in Southall *et al.*, 2007). Please see Southall *et al.*, (2007) for an in-depth discussion of these concepts.

Pulsed sound sources (*e.g.*, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986; Harris, 1998; NIOSH, 1998; ISO, 2003; ANSI, 2005) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or non-continuous (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.*, rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems (such as those used by the U.S. Navy). The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak SPLs may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.*, 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.*, 2005).

TABLE 3—REPRESENTATIVE SOUND LEVELS OF ANTHROPOGENIC SOURCES

Sound source	Frequency range (Hz)	Underwater sound level	Reference
Small vessels	250–1,000	151 dB rms at 1 m	Richardson *et al.*, 1995.
Tug docking gravel barge	200–1,000	149 dB rms at 100 m	Blackwell and Greene, 2002.
Vibratory driving of 72-in steel pipe pile	10–1,500	180 dB rms at 10 m	Reyff, 2007.
Impact driving of 36-in steel pipe pile	10–1,500	195 dB rms at 10 m	Laughlin, 2005.
Impact driving of 66-in cast-in-steel-shell (CISS) pile	10–1,500	195 dB rms at 10 m	Reviewed in Hastings and Popper, 2005.

The likely or possible impacts of the proposed project on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of the equipment and personnel. Any impacts to marine mammals, however, are expected to primarily be acoustic in nature.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals, and exposure to sound can have deleterious effects. To appropriately assess these potential effects, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.*, Richardson *et al.*, 1995; Wartzok

and Ketten, 1999). To reflect this, Southall *et al.,* (2007) recommended that marine mammals be divided into functional hearing groups based on measured or estimated hearing ranges on the basis of available behavioral data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. The lower and/or upper frequencies for some of these functional hearing groups have been modified from those designated by Southall *et al.,* (2007). The functional groups and the associated frequencies are indicated below (note that these frequency ranges do not necessarily correspond to the range of best hearing, which varies by species):

- *Low-frequency cetaceans (mysticetes):* Functional hearing is estimated to occur between approximately 7 Hz and 25 kHz (extended from 22 kHz; Watkins, 1986; Lucifredi and Stein, 2007; Ketten and Mountain, 2009; Tubelli *et al.,* 2012);
- *Mid-frequency cetaceans (larger toothed whales, beaked whales, and most delphinids):* Functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High-frequency cetaceans (porpoises, river dolphins, and members of the genera *Kogia* and *Cephalorhynchus;* now considered to include two members of the genus *Lagenorhynchus* on the basis of recent echolocation data and genetic data [May-Collado and Agnarsson, 2006; Kyhn *et al.,* 2009, 2010; Tougaard *et al.,* 2010]): Functional hearing is estimated to occur between approximately 200 Hz and 180 kHz; and
- *Pinnipeds in water:* Functional hearing is estimated to occur between approximately 75 Hz to 100 kHz for Phocidae (true seals) and between 100 Hz and 48 kHz for Otariidae (eared seals), with the greatest sensitivity between approximately 700 Hz and 20 kHz. The pinniped functional hearing group was modified from Southall *et al.,* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Kastelein *et al.,* 2009; Reichmuth *et al.,* 2013).

The single cetacean species likely to occur in the proposed project area and for which take is requested, is classified as a high-frequency cetacean (*i.e.,* harbor porpoise) (Southall *et al.,* 2007). Additionally, gray seals, harbor seals, hooded seals, and harp seals are classified as members of the phocid pinnipeds in-water functional hearing group.

Acoustic Effects, Underwater

Potential Effects of Pile Driving Sound—The effects of sounds from pile driving might result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007). The effects of pile driving on marine mammals are dependent on several factors, including the size, type, and depth of the animal; the depth, intensity, and duration of the pile driving sound; the depth of the water column; the substrate of the habitat; the standoff distance between the pile and the animal; and the sound propagation properties of the environment. Impacts to marine mammals from pile driving activities are expected to result primarily from acoustic pathways. As such, the degree of effect is intrinsically related to the received level and duration of the sound exposure, which are in turn influenced by the distance between the animal and the source. The further away from the source, the less intense the exposure should be.

The substrate and depth of the habitat affect the sound propagation properties of the environment. Shallow environments are typically more structurally complex, which leads to rapid sound attenuation. In addition, substrates that are soft (*e.g.,* sand) would absorb or attenuate the sound more readily than hard substrates (*e.g.,* rock) which may reflect the acoustic wave. Soft porous substrates would also likely require less time to drive the pile, and possibly less forceful equipment, which would ultimately decrease the intensity of the acoustic source. Much of the shoreline in the project area has been characterized as hard shores (rocky intertidal). In general, rocky intertidal areas consist of bedrock that alternates between marine and terrestrial habitats, depending on the tide. Rocky intertidal areas are characterized by bedrock, stones, or boulders that singly or in combination cover 75 percent or more of an area that is covered less than 30 percent by vegetation.

In the absence of mitigation, impacts to marine species would be expected to result from physiological and behavioral responses to both the type and strength of the acoustic signature (Viada *et al.,* 2008). The type and severity of behavioral impacts are more difficult to document due to limited studies addressing the behavioral effects of impulse sounds on marine mammals. Potential effects from impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.,* 1973).

Hearing Impairment and Other Physical Effects—Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.,* 1999; Schlundt *et al.,* 2000; Finneran *et al.,* 2003, 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). Marine mammals depend on acoustic cues for vital biological functions, (*e.g.,* orientation, communication, finding prey, avoiding predators); thus, TTS may result in reduced fitness in survival and reproduction. However, this depends on the frequency and duration of TTS, as well as the biological context in which it occurs. TTS of limited duration, occurring in a frequency range that does not coincide with that used for recognition of important acoustic cues, would have little to no effect on an animal's fitness. Repeated sound exposure that leads to TTS could cause PTS. PTS constitutes injury, but TTS does not (Southall *et al.,* 2007). The following subsections discuss in somewhat more detail the possibilities of TTS, PTS, and non-auditory physical effects.

Temporary Threshold Shift—TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be stronger in order to be heard. In terrestrial mammals, TTS can last from minutes or hours to days (in cases of strong TTS). For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound. Available data on TTS in marine mammals are summarized in Southall *et al.,* (2007).

Given the available data, the received level of a single pulse (with no frequency weighting) might need to be approximately 186 dB re 1 μPa^2-s (*i.e.,* 186 dB sound exposure level [SEL] or approximately 221–226 dB p-p [peak]) in order to produce brief, mild TTS.

Exposure to several strong pulses that each have received levels near 190 dB rms (175–180 dB SEL) might result in cumulative exposure of approximately 186 dB SEL and thus slight TTS in a small odontocete, assuming the TTS threshold is (to a first approximation) a function of the total received pulse energy (Southall *et al.* 2007).

The above TTS information for odontocetes is derived from studies on the bottlenose dolphin (*Tursiops truncatus*) and beluga whale. There is no published TTS information for other species of cetaceans. However, preliminary evidence from a harbor porpoise exposed to pulsed sound suggests that its TTS threshold may have been lower (Lucke *et al.*, 2009). Furthermore, harbor porpoise are high frequency hearing specialists so they are not as sensitive to lower frequency sounds produced by pile driving as much as belugas and bottlenose dolphins are. As summarized above, data that are now available imply that TTS is unlikely to occur unless odontocetes are exposed to pile driving pulses stronger than 180 dB re 1 µPa rms.

Permanent Threshold Shift—When PTS occurs, there is physical damage to the sound receptors in the ear. In severe cases, there can be total or partial deafness, while in other cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985). There is no specific evidence that exposure to pulses of sound can cause PTS in any marine mammal. However, given the possibility that mammals close to a sound source can incur TTS, it is possible that some individuals might incur PTS. Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage, but repeated or (in some cases) single exposures to a level well above that causing TTS onset might elicit PTS.

Relationships between TTS and PTS thresholds have not been studied in marine mammals but are assumed to be similar to those in humans and other terrestrial mammals, based on anatomical similarities. PTS might occur at a received sound level at least several decibels above that inducing mild TTS if the animal were exposed to strong sound pulses with rapid rise time. Based on data from terrestrial mammals, a precautionary assumption is that the PTS threshold for impulse sounds (such as pile driving pulses as received close to the source) is at least 6 dB higher than the TTS threshold on a peak-pressure basis and probably greater than 6 dB (Southall *et al.*, 2007). On an SEL basis, Southall *et al.*, (2007) estimated that received levels would need to exceed the TTS threshold by at least 15 dB for there to be risk of PTS. Thus, for cetaceans, Southall *et al.*, (2007) estimate that the PTS threshold might be an M-weighted SEL (for the sequence of received pulses) of approximately 198 dB re 1 μPa^2-s (15 dB higher than the TTS threshold for an impulse). Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

Although no marine mammals have been shown to experience TTS or PTS as a result of being exposed to pile driving activities, captive bottlenose dolphins and beluga whales exhibited changes in behavior when exposed to strong pulsed sounds (Finneran *et al.*, 2000, 2003, 2005). The animals tolerated high received levels of sound before exhibiting aversive behaviors. Experiments on a beluga whale showed that exposure to a single watergun impulse at a received level of 207 kPa (30 psi) p-p, which is equivalent to 228 dB p-p, resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within four minutes of the exposure (Finneran *et al.*, 2003). Although the source level of pile driving from one hammer strike is expected to be much lower than the single watergun impulse cited here, animals being exposed for a prolonged period to repeated hammer strikes could receive more sound exposure in terms of SEL than from the single watergun impulse (estimated at 188 dB re 1 μPa^2-s) in the aforementioned experiment (Finneran *et al.*, 2003). However, in order for marine mammals to experience TTS or PTS, the animals have to be close enough to be exposed to high intensity sound levels for a prolonged period of time. Based on the best scientific information available, these SPLs are far below the thresholds that could cause TTS or the onset of PTS.

Non-auditory Physiological Effects—Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.*, 2006; Southall *et al.*, 2007). Studies examining such effects are limited. In general, little is known about the potential for pile driving to cause auditory impairment or other physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would presumably be limited to short distances from the sound source and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.*, 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of pile driving, including some odontocetes and some pinnipeds, are especially unlikely to incur auditory impairment or non-auditory physical effects.

Disturbance Reactions

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous changes in activities, and displacement. Behavioral responses to sound are highly variable and context-specific and reactions, if any, depend on species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day, and many other factors (Richardson *et al.*, 1995; Wartzok *et al.*, 2003; Southall *et al.*, 2007).

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.*, 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. Behavioral state may affect the type of response as well. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.*, 1995; NRC, 2003; Wartzok *et al.*, 2003).

Controlled experiments with captive marine mammals showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.*, 1997; Finneran *et al.*, 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic guns or acoustic harassment devices, but also including pile driving) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; Thorson and Reyff, 2006; see also Gordon *et al.*, 2004; Wartzok *et al.*, 2003; Nowacek *et al.*, 2007). Responses to continuous sound, such as vibratory pile installation, have not been documented as well as responses to pulsed sounds.

With both types of pile driving, it is likely that the onset of pile driving

could result in temporary, short term changes in an animal's typical behavior and/or avoidance of the affected area. These behavioral changes may include (Richardson *et al.*, 1995): Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located; and/or flight responses (*e.g.*, pinnipeds flushing into water from haul-outs or rookeries). Pinnipeds may increase their haul-out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, or reproduction. Significant behavioral modifications that could potentially lead to effects on growth, survival, or reproduction include:

- Drastic changes in diving/surfacing patterns (such as those thought to cause beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cessation of feeding or social interaction.

The onset of behavioral disturbance from anthropogenic sound depends on both external factors (characteristics of sound sources and their paths) and the specific characteristics of the receiving animals (hearing, motivation, experience, demography) and is difficult to predict (Southall *et al.*, 2007).

Auditory Masking

Natural and artificial sounds can disrupt behavior by masking, or interfering with, a marine mammal's ability to hear other sounds. Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher levels. Chronic exposure to excessive, though not high-intensity, sound could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions. Masking can interfere with detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction. If the coincident (masking) sound were anthropogenic, it could be potentially harassing if it disrupted hearing-related behavior. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs only during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

Masking occurs at the frequency band which the animals utilize so the frequency range of the potentially masking sound is important in determining any potential behavioral impacts. Because sound generated from in-water vibratory pile driving is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds made by porpoises. However, lower frequency man-made sounds are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey sound. It may also affect communication signals when they occur near the sound band and thus reduce the communication space of animals (*e.g.*, Clark *et al.*, 2009) and cause increased stress levels (*e.g.*, Foote *et al.*, 2004; Holt *et al.*, 2009).

Masking affects both senders and receivers of the signals and can potentially have long-term chronic effects on marine mammal species and populations. Recent research suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, and that most of these increases are from distant shipping (Hildebrand, 2009). All anthropogenic sound sources, such as those from vessel traffic, pile driving, and dredging activities, contribute to the elevated ambient sound levels, thus intensifying masking.

The most intense underwater sounds in the proposed action are those produced by impact pile driving. Given that the energy distribution of pile driving covers a broad frequency spectrum, sound from these sources would likely be within the audible range of marine mammals present in the project area. Impact pile driving activity is relatively short-term, with rapid pulses occurring for approximately fifteen minutes per pile. The probability for impact pile driving resulting from this proposed action masking acoustic signals important to the behavior and survival of marine mammal species is likely to be negligible. Vibratory pile driving is also relatively short-term, with rapid oscillations occurring for approximately one and a half hours per pile. It is possible that vibratory pile driving resulting from this proposed action may mask acoustic signals important to the behavior and survival of marine mammal species, but the short-term duration and limited affected area would result in insignificant impacts from masking. Any masking event that could possibly rise to Level B harassment under the MMPA would occur concurrently within the zones of behavioral harassment already estimated for vibratory and impact pile driving, and which have already been taken into account in the exposure analysis.

Acoustic Effects, Airborne

Marine mammals that occur in the project area could be exposed to airborne sounds associated with pile driving that have the potential to cause harassment, depending on their distance from pile driving activities. Airborne pile driving sound would not impact cetaceans because sound from atmospheric sources does not transmit well underwater (Richardson *et al.*, 1995); thus, airborne sound may only be an issue for pinnipeds either hauled-out or looking with heads above water in the project area. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon their habitat and move further from the source. Studies by Blackwell *et al.*, (2004) and Moulton *et al.*, (2005) indicate a tolerance or lack of response to unweighted airborne sounds as high as 112 dB peak and 96 dB rms. However, since there are no regular haul-outs in the vicinity of the site of the proposed project area, we believe that incidents of incidental take resulting from airborne sound or visual disturbance are unlikely.

Vessel Interaction

Besides being susceptible to vessel strikes, cetacean and pinniped responses to vessels may result in behavioral changes, including greater variability in the dive, surfacing, and respiration patterns; changes in vocalizations; and changes in swimming speed or direction (NRC 2003). There

will be a temporary and localized increase in vessel traffic during construction.

Potential Effects on Marine Mammal Habitat

The proposed activities at Portsmouth Naval Shipyard would not result in permanent impacts to habitats used directly by marine mammals, but may have potential short-term impacts to food sources such as forage fish and may affect acoustic habitat (see masking discussion above). There are no known foraging hotspots or other ocean bottom structure of significant biological importance to marine mammals present in the marine waters of the project area. Therefore, the main impact issue associated with the proposed activity would be temporarily elevated sound levels and the associated direct effects on marine mammals, as discussed previously in this document. The most likely impact to marine mammal habitat would be the effect of pile driving on likely marine mammal prey (*i.e.,* fish) and minor impacts to the immediate substrate during installation and removal of piles.

Potential Pile Driving Effects on Prey

Construction activities may produce both pulsed (*i.e.,* impact pile driving) and continuous (*i.e.,* vibratory pile driving) sounds. Fish react to sounds which are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving (or other types of sounds) on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Sound pulses at received levels of 160 dB re 1 µPa may cause subtle changes in fish behavior. SPLs of 180 dB may cause noticeable changes in behavior (Pearson *et al.,* 1992; Skalski *et al.,* 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality. The most likely impact to fish from pile driving activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe for the project.

Effects to Foraging Habitat

During the course of the proposed project, various activities are expected to disturb the sediment. These activities include pile driving, dredging, and filling. In order to minimize the amount of debris, sediment, and silt escaping when backfilling the Berth 11 bulkhead, the Navy will install geotextile fabric against the interior of the bulkhead to catch debris, sediment, and silt forced through seams in the bulkhead when the backfill is compacted. In addition, a temporary silt curtain and boom would be installed outside of Berth 11, approximately 18 feet off the berth, during backfilling to catch additional debris, sediment, and silt that escapes the bulkhead.

Pile driving and dredging activities may re-suspend disturbed sediment and result in turbid conditions within the immediate project area. Suspended sediments may be transported and re-deposited downstream of the prevailing currents, which could increase siltation in the vicinity of the Shipyard. Resulting sedimentation is also expected to be localized and temporary. Since the currents are so strong in the area, suspended sediments in the water column should dissipate and quickly return to background levels. Following the completion of sediment-disturbing activities, the turbidity levels within the temporary offshore workspace are expected to return to normal ambient levels following the end of construction in all construction scenarios. Turbidity within the water column has the potential to reduce the level of oxygen in the water and irritate the gills of cetacean or pinniped prey fish species in the project area. However, turbidity plumes associated with the project would be temporary and localized, and fish in the project area would be able to move away from and avoid the areas where plumes may occur. Therefore, it is expected that the impacts on prey fish species from turbidity, and therefore on marine mammals, would be minimal and temporary. In general, the area likely impacted by the project is relatively small compared to the available habitat in Great Bay Estuary. As a result, activity at the project site would be inconsequential in terms of its effects on marine mammal foraging.

In summary, given the short daily duration of sound associated with individual pile driving events and the relatively small areas being affected, pile driving activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, populations of fish species or marine mammal foraging habitat at the project area. Furthermore, any impacts to marine mammal habitat that may occur are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

Proposed Mitigation Measures

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, "and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking" for certain subsistence uses. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, their habitat. 50 CFR 216.104(a)(11). For the proposed project, the Navy worked with NMFS and proposed the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity. The primary purposes of these mitigation measures are to minimize sound levels from the activities, and to monitor marine mammals within designated zones of influence corresponding to NMFS' current Level A and B harassment thresholds which are depicted in Table 9 found later in the *Estimated Take by Incidental Harassment* section.

In addition to the measures described later in this section, the Navy would employ the following standard mitigation measures:

Time Restrictions—Pile driving/removal (vibratory as well as impact), drilling, and vibratory extraction will only be conducted during daylight hours.

Establishment of Shutdown Zone—During pile driving and removal, the shutdown zone shall include all areas where the underwater SPLs are anticipated to equal or exceed the Level A (injury) harassment criteria for marine mammals (180 dB rms isopleth for cetaceans; 190 dB rms isopleth for pinnipeds). During all pile driving and removal activities, regardless of predicted SPLs, the entire Level A zone, or shutdown zone, will be monitored to prevent injury to marine mammals from their physical interaction with construction equipment during in-water

activities. Pile driving or removal operations will cease if a marine mammal approaches the zone. Pile driving/removal operations will restart once the marine mammal is visibly seen leaving the Level A zone, or after 15 minutes have passed with no sightings

During all in-water construction or demolition activities having the potential to affect marine mammals, a shutdown zone of 10 m will be implemented to ensure marine mammals are not present within this zone. These activities could include, but are not limited to: (1) Pile driving and removal and the the removal of a pile from the water column/substrate via a crane (*i.e.,* a ''dead pull''). These precautionary measures would also further reduce the possibility of auditory injury and behavioral impacts as well as limit the unlikely possibility of injury from direct physical interaction with construction operations. For in-water heavy machinery work other than pile driving (using, *e.g.,* standard barges, tug boats), if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions.

Establishment of Disturbance Zone or Zone of Influence—Disturbance zones or zones of influence (ZOI) are the areas in which SPLs equal or exceed 160 dB rms for impact driving and 120 dB rms for vibratory driving. Disturbance zones provide utility for monitoring conducted for mitigation purposes (*i.e.,* shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of disturbance zones enables observers to be aware of and communicate the presence of marine mammals in the project area but outside the shutdown zone and thus prepare for potential shutdowns of activity. However, the primary purpose of disturbance zone monitoring is for documenting incidents of Level B harassment; disturbance zone monitoring is discussed in greater detail later (see ''Proposed Monitoring and Reporting''). Nominal radial distances for disturbance zones are shown in Table 9 in this Notice. Due to the increased costs associated with monitoring the entire Level B zone, or buffer zone, the zone will be monitored during two-thirds of all pile driving days. If a marine mammal is observed entering the buffer zone, an exposure would be recorded and behaviors documented. The Navy will extrapolate data collected during monitoring days and extrapolate and calculate total takes for all pile driving days.

All shutdown and disturbance zones will initially be based on the distances from the source that were predicted for each threshold level.

Soft Start—The use of a soft start procedure is believed to provide additional protection to marine mammals by providing a warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. The Navy will use soft-start techniques (ramp-up/dry fire) recommended by NMFS for impact driving. Soft start must be conducted at beginning of day's activity and at any time pile driving has ceased for more than 30 minutes. For impact hammer driving, contractors are required to provide an initial set of three strikes from the impact hammer at 40 percent energy, followed by a 30-second waiting period, then two subsequent 3-strike sets. The 30-second waiting period is proposed based on the Navy's recent experience and consultation with NOAA Fisheries Service on a similar project at Naval Base Kitsap at Bangor (Department of the Navy 2010).

Monitoring Protocols

Visual Marine Mammal Observation—The Navy will collect sighting data and behavioral responses to construction for marine mammal species observed in the region of activity during the period of activity. All observers will be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. The Navy will monitor the shutdown zone and disturbance zone before, during, and after pile driving, with observers located at the best practicable vantage points. Based on NMFS requirements, the Marine Mammal Monitoring Plan would implement the following procedures for pile driving and removal:

- *Impact Installation:* Monitoring will be conducted within the Level A harassment shutdown zone during all pile driving operations and the Level B harassment buffer zone during two-thirds of pile driving days. Monitoring will take place from 15 minutes prior to initiation through 30 minutes post-completion of pile driving/removal activities.
- A minimum of two marine mammal observers (MMOs) will be in place during all pile-driving/removal operations. MMOs designated by the contractor will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to equipment operators. The MMOs shall have no other construction-related tasks while conducting monitoring and will be trained on the observation zones, species identification, how to observe, and how to fill out the data sheets by the Navy Natural Resources Manager prior to any pile driving activities.
- The Navy shall conduct a pre-construction briefing with the contractor. During the briefing, all contractor personnel working in the Project area will watch the Navy's Marine Species Awareness Training video. An informal guide will be included with the monitoring plan to aid in identifying species if they are observed in the vicinity of the Project area.
- Prior to the start of pile driving/removal activity, the shutdown and safety zones will be monitored for 15 minutes to ensure that they are clear of marine mammals. Pile driving will only commence once observers have declared the shutdown zone clear of marine mammals; animals will be allowed to remain in the disturbance zone and their behavior will be monitored and documented.
- In the unlikely event of conditions that prevent the visual detection of marine mammals, such as heavy fog, activities with the potential to result in Level A or Level B harassment will not be initiated. Pile driving would be curtailed, but vibratory pile driving or extraction would be allowed to continue if such conditions arise after the activity has begun.
- The waters will continue to be scanned for at least 30 minutes after pile driving has completed each day.

Mitigation Conclusions

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of affecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current

science), or contribute to the accomplishment of one or more of the general goals listed below:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of pile driving, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of pile driving, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of pile driving, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, our preliminarily determination is that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth, "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. The Navy submitted a marine mammal monitoring plan as part of the IHA application. It can be found in Section 13 of the application. *http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.*

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

1. An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below;

2. An increase in our understanding of how many marine mammals are likely to be exposed to levels of pile driving that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS;

3. An increase in our understanding of how marine mammals respond to stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

- Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;

4. An increased knowledge of the affected species; and

5. An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

Acoustic Monitoring

The Navy will implement in situ acoustic monitoring efforts to measure SPL from in-water construction activities. The Navy will collect and evaluate acoustic sound record levels for 10 percent of the pile-driving activities conducted, sufficient to confirm measured contours associated with the acoustic ZOIs. Acoustic sound recordings will be collected sufficient to document sound source levels for 10 percent of the proposed piles to be driven and extracted. The Navy will conduct acoustic monitoring at the source (33 feet) and, where the potential for Level A harassment exists, at a second representative monitoring location at an intermediate distance between the cetacean and pinniped shutdown zones. In conjunction with measurements of SPLs at the source and shutdown monitoring locations, there will also be intermittent verification for impact driving or pile driving and extraction to determine the actual distance to either the 120 dB re 1µPa rms isopleth or the point at which the SPL (maximum rms) from the equipment diminishes to the median ambient SPL (rms) and hence becomes indistinguishable. Acoustic measurements will continue during subsequent years of in-water construction for the Project.

Visual Marine Mammal Observations

The Navy will collect sighting data and behavioral responses to construction for marine mammal species observed in the region of activity during the period of construction. All observers will be trained in marine mammal identification and behaviors. NOAA Fisheries Service requires that the observers have no other construction-related tasks while conducting monitoring.

The Navy will monitor the shutdown zone and safety zone before, during, and after pile driving activities. Based on NOAA Fisheries Service requirements, the Marine Mammal Monitoring Plan would include the following procedures:

- MMOs will be primarily located on boats, docks, and piers at the best vantage point(s) in order to properly see the entire shut down zone(s);
- MMOs will be located at the best vantage point(s) to observe the zone associated with behavioral impact thresholds;
- During all observation periods, observers will use binoculars and the naked eye to search continuously for marine mammals;
- Monitoring distances will be measured with range finders;
- Distances to animals will be based on the best estimate of the MMO, relative to known distances to objects in the vicinity of the MMO;
- Bearing to animals will be determined using a compass; and

• Pile driving activities will be curtailed under conditions of fog or poor visibility that might obscure the presence of a marine mammal within the shutdown zone;

Post-Activity Monitoring

Monitoring of the shutdown and disturbance zones will continue for 30 minutes following the completion of the activity.

Data Collection

MMOs will use NMFS' approved data forms. Among other pieces of information, the Navy will record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. At a minimum, the following information would be collected on the sighting forms:

• Date and time that monitored activity begins or ends;
• Construction activities occurring during each observation period;
• Weather parameters (*e.g.,* percent cover, visibility);
• Water conditions (*e.g.,* sea state, tide state);
• Species, numbers, and, if possible, sex and age class of marine mammals;
• Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
• Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
• Locations of all marine mammal observations; and
• Other human activity in the area.

Reporting Measures

The Navy would provide NMFS with a draft monitoring report within 60 days prior to any subsequent authorization, whichever is sooner. A monitoring report is required before another authorization can be issued to the Navy. This report will detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed. If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report must be submitted within 30 days after receipt of comments. The report should include data and information listed in Section 13.3 of the application.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury, serious injury or mortality (*e.g.,* ship-strike, gear interaction, and/or entanglement), the Navy shall immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Northeast/Greater Atlantic Regional Stranding Coordinator. The report would include the following information:

• Time, date, and location (latitude/longitude) of the incident;
• Name and type of vessel involved;
• Vessel's speed during and leading up to the incident;
• Description of the incident;
• Status of all sound source use in the 24 hours preceding the incident;
• Water depth;
• Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
• Description of all marine mammal observations in the 24 hours preceding the incident;
• Species identification or description of the animal(s) involved;
• Fate of the animal(s); and
• Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with the Navy to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The Navy would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that the Navy discovers an injured or dead marine mammal, and the lead MMO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), the Navy would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Greater Atlantic Regional Stranding Coordinator. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with the Navy to determine whether modifications in the activities are appropriate.

In the event that the Navy discovers an injured or dead marine mammal, and the lead MMO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), The Navy would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Greater Atlantic Regional Stranding Coordinator within 24 hours of the discovery. The Navy would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as: "any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]."

All anticipated takes would be by Level B harassment resulting from pile driving and are likely to involve temporary changes in behavior. Physical injury or lethal takes are not expected due to the expected source levels and sound source characteristics associated with the activity, and the proposed mitigation and monitoring measures are expected to further minimize the possibility of such take.

Given the many uncertainties in predicting the quantity and types of impacts of sound on marine mammals, it is common practice to estimate how many animals are likely to be present within a particular distance of a given activity, or exposed to a particular level of sound, where NMFS believes take is likely.

The Navy has requested authorization for the incidental taking of small numbers of harbor porpoise, harbor seal, gray seal, hooded seal and harp seal that may result from vibratory and impact pile driving and removal during activities associated with the waterfront improvement project.

In order to estimate the potential incidents of take that may occur incidental to the specified activity, we must first estimate the extent of the sound field that may be produced by the activity and then consider in combination with information about marine mammal density or abundance in the project area. We first provide information on applicable sound thresholds for determining effects to marine mammals before describing the

information used in estimating the sound fields, the available marine mammal density or abundance information, and the method of estimating potential incidences of take.

Sound Thresholds

We use generic sound exposure thresholds to determine when an activity that produces sound might result in impacts to a marine mammal such that a take by harassment might occur. To date, no studies have been conducted that explicitly examine impacts to marine mammals from pile driving sounds or from which empirical sound thresholds have been established. These thresholds (Table 4) are used to estimate when harassment may occur (*i.e.,* when an animal is exposed to levels equal to or exceeding the relevant criterion) in specific contexts; however, useful contextual information that may inform our assessment of effects is typically lacking and we consider these thresholds as step functions. NMFS is working to revise these acoustic guidelines; for more information on that process, please visit *www.nmfs.noaa.gov/pr/acoustics/guidelines.htm.*

TABLE 4—UNDERWATER INJURY AND DISTURBANCE THRESHOLD DECIBEL LEVELS FOR MARINE MAMMALS

Criterion	Criterion definition	Threshold *
Level A harassment	PTS (injury) **	190 dB RMS for pinnipeds. 180 dB RMS for cetaceans.
Level B harassment	Behavioral disruption for impulse noise (*e.g.,* impact pile driving)	160 dB RMS.
Level B harassment	Behavioral disruption for non-pulse noise (*e.g.,* vibratory pile driving, drilling).	120 dB RMS.***

* All decibel levels referenced to 1 micropascal (re: 1 μPa). Note all thresholds are based off root mean square (RMS) levels.
** PTS = Permanent Threshold Shift conservatively based on TTS (Temporary Threshold Shift) Distance to Sound Thresholds.

Underwater Sound Propagation Formula—Pile driving generates underwater noise that can potentially result in disturbance to marine mammals in the project area. Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments.

Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source. The formula for practical spreading transmission loss is TL = 10 log10 (R/10), where R is the distance from the source assuming the near source levels are measured at 10 meters (33 feet). This transmission loss model was used for piles being driven in a water depth less than approximately 3 meters (10 feet). Specifically, the model was used for the 14-inch H-type (sister) piles that would be driven using an impact hammer at Rail Beam 1 at Berth 11,12, and 13.

A practical spreading value of fifteen is often used in the absence of reliable data and under conditions where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading loss (4.5 dB reduction in sound level for each doubling of distance) was used in water depths ranging from 3 meters to 15 meters which is the greatest depth at which pile driving activities will take place for this project. The formula for cylindrical spreading transmission loss is TL = 15 log10 (R/10), where R is the distance from the source assuming the near source levels are measured at 10 meters (33 feet).

This transmission loss model was used for the piles being driven (or drilled) in water depths of between approximately 10 and 50 feet. These pile types and sizes included:

- 25-inch steel sheet piles, which would be driven using a vibratory hammer at Berth 11.
- 14-inch steel H-type piles, which would be driven using an impact hammer at Berth 11during trestle alignment and construction.
- 15-inch timber piles, which would be installed using a vibratory hammer to reconstruct timber dolphins at the corner of Berths 11 and 12.
- 36-inch steel H-type (king) piles at Berth 11 which would be drilled and rock-socketed into the bedrock.

This model was also used for piles extracted in water depths of 10 to 50 feet and included:

- 14-inch steel H-type piles, which would be used to align and construct the trestle that would be extracted using a vibratory hammer at Berth 11.
- 15-inch timber fender piles, which would be extracted using a vibratory hammer at Berth 11 and the timber dolphin at the corners of Berths 11 and 12.

Source levels for the two pile driving methods that are proposed for use during the project were obtained from the "Compendium of Pile Driving Sound Data," which is included as Appendix I to "Technical Guidance for Assessment and Mitigation of the Hydroacoustic Effects of Pile Driving on Fish" (ICF Jones & Stokes and Illingworth & Rodkin, Inc. 2012). The information presented in the compendium is a compilation of sound pressure levels recorded during various in-water pile driving projects in California, Oregon, Washington, and Nebraska. The compendium is a commonly used reference document for pile driving source levels when analyzing impacts on protected species, including marine mammals, from pile driving activities.

Source levels were collected for the four types of piles that would be installed and two pile driving methods proposed for the project:

- 14-inch steel H-type piles will be used as sister piles to align and construct the trestle; installed via impact hammer.
- 15-inch timber piles will be used for re-installation of dolphins and installed via vibratory hammer.
- 25-inch steel sheet piles will be used for the bulkhead at Berth 11 and installed via vibratory hammer.

Reference source levels for the Project were determined using data for piles of similar sizes, the same pile driving method as that proposed for the Project, and at similar water depths. While the

pile sizes and water depths chosen as proxies do not exactly match those for the Project, they are the closest matches available, and it is assumed that the source levels shown in Table 5 and 6 are the most representative for each pile type and associated pile driving method.

TABLE 5—SOURCE LEVELS FOR IN-WATER IMPACT HAMMER 14-INCH STEEL H-TYPE (SISTER) PILES

Pile size and pile type	Water depth (m)	Distance measured (m)	Peak (dB)	RMS (dB)	SEL (dB)	Location
12-inch Steel H-type pile—Thick	5	10	200	183	170	CA (Specific location unknown).
15-inch Steel H-type pile—Thick	3	10	195	180	170	Ballena Isle Marina, Alameda, CA, San Francisco Bay.
12- to 15-inch H-type pile—Thick (Average)	4	10	198	182	170	

Source: ICF Jones & Stokes and Illingworth & Rodkin, Inc. 2012.
Note: All source levels are referenced to 1 microPascal (re 1 μPa).
[1] As printed in source material.
Key: dB = decibel; m = meter; RMS = root mean square; SEL = sound exposure level.

TABLE 6—SOURCE LEVELS FOR IN-WATER VIBRATORY HAMMER 25-INCH STEEL SHEET PILES, 20-INCH STEEL SHEET PILES AND 15-INCH TIMBER PILES

Pile size and pile type	Water depth (m)	Distance measured (m)	Peak (dB)	RMS (dB)	SEL (dB)	Location
24-inch AZ* Steel Sheet[1]	15	10	177	163	162	Berth 23, Port of Oakland, CA.
24-inch AZ Steel Sheet[1]	15	10	175	162	162	Berth 30, Port of Oakland, CA.
24-inch AZ Steel Sheet[1]	15	10	177	163	163	Berth 35/37 Port of Oakland, CA.
24-inch AZ Steel Sheet—Typical[1]	15	10	175	160	160	CA (Specific location unknown).
24-inch AZ Steel Sheet—Loudest[1]	15	10	182	165	165	CA (Specific location unknown).
24-inch AZ Steel Sheet (Average)[1]	15	10	178	163	163	
15-inch Timber Pile[2]	10	16	164	150	NP	WSF Port Townsend Ferry Terminal, WA.

Source:
[1] ICF Jones & Stokes and Illingworth & Rodkin, Inc. 2012.
[2] WSDOT 2010.

The exact source level for a given pile and pile driving method largely depends not only on the pile size and water depth but also on site-specific conditions such as environmental and physical factors, including water temperature and sediment composition. Therefore, in this analysis, several source levels for each pile type and associated pile driving method were averaged when multiple levels were available. These averaged source levels were used as inputs to determine transmission loss, which, in turn, was used in the propagation models described above.

Drilling

Drilling is considered an intermittent, non-impulsive noise source, similar to vibratory pile driving. Very little information is available regarding source levels of in-water drilling activities associated with nearshore pile installation such as that proposed for the Berths 11, 12, and 13 structural repairs project. Dazey *et al.*, (2012) attempted to characterize the source levels of several marine pile-drilling activities. One such activity was auger drilling (including installation and removal of the associated steel casing). The average sound pressure levels re 1 μPa RMS were displayed for casing installation, auger drilling (inside the casing), and casing removal. For the purposes of this plan, it is assumed that the casing installation and removal activities would be conducted in a manner similar to that described in Dazey *et al.*, (2012), primarily via oscillation. These average source levels are reported in Table 7.

TABLE 7—AVERAGE SOURCE LEVELS FOR AUGER DRILLING ACTIVITIES DURING PILE INSTALLATION

Drilling activity	Water depth (m)	Distance measured (m)	RMS (dB)	Location
Casing Installation	1–5	1	157	Bechers Bay Santa Rosa Island, CA.
Auger Drilling	1–5	1	151	Bechers Bay Santa Rosa Island, CA.
Casing Removal	1–5	1	152	Bechers Bay Santa Rosa Island, CA.

Source: Dazey *et al.*, 2012.
Note: All source levels are referenced to 1 microPascal (re 1 μPa).

IHA applications for other construction projects have reported that, due to a lack of information regarding pile drilling source levels, it is generally assumed that pile drilling would produce less in-water noise than both impact and vibratory pile driving. Based on the general lack of information about these activities and the assumption that in-water noise from pile drilling would be less than either impact or vibratory pile driving, it is assumed that the

source levels presented in Table 7 are the most applicable for acoustic impact analysis at Berths 11, 12, and 13. For the purposes of this proposed IHA we will conservatively assume that drilling has similar source levels as vibratory driving when calculating zones of influences.

Pile Extraction

Vibratory pile extraction is considered an intermittent, non-impulsive noise source. Little information is available specific to vibratory extraction for most types of piles. The source level for timber-pile extraction was obtained from "Port Townsend Test Pile Project: Underwater Noise Monitoring Draft Final Report," prepared by Jim Loughlin for the Washington State Department of Transportation Office of Air Quality and Noise (WSDOT 2010) and is shown in Table 8.

Source levels for vibratory extraction of H-type piles were obtained from "Underwater Acoustic Measurements of Vibratory Pile Driving at the Pipeline 5 Crossing in the Snohomish River, Everett, Washington," prepared by Greeneridge Science, Inc., for the City of Everett (Burgess *et al.*, 2005).

For vibratory pile extraction of the 24-inch steel sheet piles (used as a proxy for the 20-inch steel sheet piles that would be extracted at the circular, cellular cofferdam), the average value for the vibratory installation source levels from Table 6 was used. Sources including ICF Jones & Stokes and Illingworth & Rodkin, Inc. (2012) report the same values for vibratory installation and extraction, assuming that the two activities would produce similar source levels if water depth, pile size, and equipment remain constant.

Reference source levels for the project were determined using data for piles of similar size, the same extraction method as that proposed for the project, and at similar water depths. While the pile sizes and water depths chosen as proxies do not exactly match those for the project, they are the closest matches available, and it is assumed that the source levels shown in Table 8 and are representative of the vibratory pile extraction method used for the project.

TABLE 8—AVERAGE SOURCE LEVEL FOR VIBRATORY PILE EXTRACTION 15-INCH TIMBER FENDER PILES [1]

Pile size and pile type	Water depth (m)	Distance measured (m)	Peak (dB)	RMS (dB)	Location
15-inch Timber Fender Pile [2]	10m	16m	164	150	WSF Port, Townsend Ferry Terminal, WA.

Notes:
[1] All source levels are referenced to 1 microPascal (re 1 μPa).
[2] WSDOT 2010.

Zones of Influence

Attenuation distances to the NOAA Fisheries thresholds for Level B takes for pile driving are described in Table 9. These attenuation distances have been developed using the propagation models described above. Modeling was performed for each driving, drilling, installing, and removing activity described above using the depth-appropriate model. Activities that would result in the longest attenuation distances were selected as the worst-case sound exposure distances that would determine the ZOI for each project location.

TABLE 9—PILE DRIVING SOUND EXPOSURE DISTANCES

[In-water]

Drilling activity	Behavioral thresholds for cetaceans and pinnipeds	Propagation model	Attenuation distance to threshold
Vibratory Hammer	120 dB RMS	Practical Spreading Loss (3 m to 15 m water depth).	4.57 mi (7.35 km).
Impact Hammer	160 dB RMS	Cylindrical Spreading Loss (<3 m water depth).	0.984 mi (1.58 km).

Note: All source levels are referenced to 1 microPascal (re 1 μPa).

During vibratory hammer operation modeled sound would attenuate to 120 dB at approximately 4.57 miles from the Berth 11 Structural Repairs Project. During operation of the impact hammer, modeled sound would attenuate to 160 dB at approximately 0.98 miles from the Berths 11 Structural Repairs Project site. Note that these attenuation distances are based on sound characteristics in open water. The Project area is located in a river surrounded by topographic features and not in open water; therefore, given the numerous land features and islands within the vicinity of the Project sites in the Piscataqua River, these attenuation distances are extremely conservative.

No Level A takes are expected because attenuation out to the pinniped injury threshold of 190 dB rms is calculated at 5 feet (1.58 meters), and attenuation out to the 180 dB RMS injury threshold for cetaceans is calculated at 52 feet (15.8 meters). These very small areas can easily be monitored for marine mammals, and mitigative measures would be implemented to ensure that no Level A takes occur.

The ZOIs for each of the two separate sound sources (impact driving and vibratory driving/drilling) at Berth 11 are shown on Figure 6–1 in the application. Work would occur in phases over several years. All of the construction-related in-water sound occurring within the waters of these ZOIs would exceed the designated NOAA Fisheries thresholds for behavioral take. The ZOIs were used to calculate potential takes from each sound source and would be monitored during in-water work at Berth 11 to estimate actual harassment takes of marine mammals. The total area ensonified by these two sources is 0.36 square miles (mi^2) (233.4 acres).

The numerous topographic features present in and along the Piscataqua River would greatly limit the area that would be impacted from in-water sound. Sound from either source would be truncated with minimal attenuation. Due to the numerous islands and other land features at and around the site, the actual ZOIs for both the vibratory hammer and impact hammer are identical even though the calculated ZOIs are different. This is illustrated in Figure 6–1 in the Application.

No sound is expected to fully attenuate to the 120-decibel threshold for vibratory pile driving because topographic features (*e.g.* islands, shorelines) in the river would prevent attenuation to the full distance of 4.57 miles. Very little sound would reach the 160 dB threshold at the full distance of 0.984 miles for the impact hammer due to these same sound-blocking topographical features. The longest attenuation distance from the Berth 11 Project site would occur to the southeast where, during impact pile driving, sound would attenuate through the waters east of Pierce Island to the 160 dB threshold (a distance of 0.88 miles) at Goat Island (See Figure 6–1 in application). The actual ZOI used to estimate exposure excludes water areas blocked by topographical features.

Airborne Exposure

Airborne transmission loss was calculated using the spherical spreading model above. Using this model, the greatest possible distances to airborne harassment thresholds were estimated, using a source level of 111 dB 20 µPa rms for 24″ round steel piles, as 552.5 ft (168.3 m) to the 90 dB threshold for harbor seals and 174.5 ft (53.2 m) to the 100 dB threshold for all other seals. Other types of pile driving and extraction that would occur during the project would generate lower airborne sound pressures, with smaller distances and areas of potential disturbance, and for that reason are not considered further in this application. Since protective measures are in place out to the distances calculated for the underwater Level B thresholds, the distances for the airborne thresholds will be effectively covered by monitoring. The closest known haul-out site for seals within the Piscataqua River is 1.5 miles (2414 m) downstream of the Project area while the attenuation distance to the 90 dB threshold is 0.108 miles (174.5 m) and the 100 dB threshold is 0.033 miles (53.2 m). While there are no documented haul-outs, animals do occasionally haul-out on nearby rocks/jetties and could be flushed into the water. However, it is assumed that any hauled out animals within the disturbance zone will also enter the water and be exposed to underwater noise. Therefore, acoustic disturbance to pinniped resulting from airborne sound from pile driving and drilling are not considered further in this application.

The take calculations presented here relied on the best data currently available for marine mammal populations within close proximity to the Piscataqua River. There are not population data for any marine mammal species specifically within the Piscataqua River; however, the population data used are from the most recent NMFS Stock Assessment Reports (SAR) for the Atlantic Ocean. The most recent SAR population number was used for each species. The specific SAR used is discussed within each species take calculation in Sections 6.6.1 through 6.6.5 of the application. The formula was developed for calculating take due to pile driving, extraction, and drilling and applied to the species-specific noise-impact threshold. The formula is founded on the following assumptions:

- All piles to be installed would have a noise disturbance distance equal to the pile that causes the greatest noise disturbance.
- Pile driving could potentially occur every day of the in-water work window; however, it is estimated no more than a few hours of pile driving would occur per day.
- An individual can only be taken once per day due to sound from pile driving, whether from impact or vibratory pile driving, or vibratory extraction

The conservative assumption is made that all pinnipeds within the ZOI would be underwater during at least a portion of the noise generating activity and, hence, exposed to sound at the predicted levels.

The calculation for marine mammal takes is estimated by:

Take estimate = (n * ZOI) * X days of total activity

Where:

n = density estimate used for each species
X = number of days of pile driving, estimated based on the total number of piles and the average number of piles that the contractor can install per day.
ZOI = noise threshold zone of influence (ZOI) impact area

The calculation n * ZOI produces an estimate of the abundance of animals that could be present in the area of exposure per day. The abundance is then multiplied by the total number of days of pile driving to determine the take estimate. Because the estimate must be a whole number, this value was rounded up.

The ZOI impact area is the estimated range of impact on marine mammals during in-water construction. The ZOI is the area in which in-water sound would exceed designated NOAA Fisheries Service thresholds. The formula for determining the area of a circle (π * $radius^2$) was used to calculate the ZOI around each pile, for each threshold. The distances specified were used for the radius in the equation. The ZOI impact area does not encompass landforms that may occur within the circle. The ZOI also took into consideration the possible affected area of the Piscataqua River from the furthest pile driving/extraction site with attenuation due to land shadowing from islands in the river as well as the river shoreline.

Harbor Porpoise

Harbor porpoises may be present in the Project area during spring, summer, and fall, from April to December. Based on density data from the Navy Marine Species Density Database, their presence is highest in spring, decreases in summer, and slightly increases in fall. However, in general, porpoises are known to occasionally occur in the river. Average density for the predicted seasons of occurrence was used to determine abundance of animals that could be present in the area for exposure, using the equation abundance = n * ZOI. Estimated abundance estimate for harbor porpoises was 0.90 animals generated from the equation (0.9445 km^2 * 0.9578 animals/km^2). Therefore, the number of Level B harbor porpoises exposures within the ZOIs is (72 days * 0.90 animals/day) which equals 65 animals. Therefore, the total requested harbor seal takes is 65.

Gray Seal

Gray seals may be present year-round in the project vicinity, with constant densities throughout the year. Gray seals are less common in the Piscataqua River than the harbor seal. Average density for the predicted seasons of occurrence was used to determine abundance of animals that could be present in the area for exposure, using the equation abundance = n * ZOI. Estimated abundance for gray seals was 0.21/day generated from the equation (0.9445 km^2 * 0.2202 animals/km^2). The number of Level B harbor porpoises exposures within the ZOIs is (72 days * 0.21 animals/day) resulting in up to 15 Level B exposures of gray seals within the ZOIs. Total requested gray seal takes is 15.

Harbor Seal

Harbor seals may be present year-round in the project vicinity, with constant densities throughout the year. Harbor seals are the most common pinniped in the Piscataqua River near the Shipyard. Average density for the predicted seasons of occurrence was used to determine abundance of animals that could be present in the area for exposure, using the equation abundance = n * ZOI. Abundance for harbor seals was 0.19/day generated from the equation (0.9445 km^2 * 0.1998 animals/km^2). The number of Level B harbor seal exposures within the ZOIs is (72 days * 0.19 animals/day) resulting in 14 harbor seals. Therefore, total requested harbor seal takes is 14.

Harp Seal

Harp seals may be present in the Project vicinity during the winter and spring, from January through February. In general, harp seals are much rarer than the harbor seal and gray seal in the Piscataqua River. Average density for the predicted seasons of occurrence was used to determine abundance of animals that could be present in the area for exposure, using the equation abundance = n * ZOI. Abundance for harp seals was 0.012/day generated from the equation (0.9445 km^2 * 0.0125 km^2). The number of Level B harp seal exposures within the ZOI is (72 days * 0.012 animals/day) resulting in one Level B exposure. Therefore, the total requested harp seal takes is 1.

Hooded Seal

Hooded seals may be present in the project vicinity during the winter and spring, from January through May, though their exact seasonal densities are unknown. In general, hooded seals are much rarer than the harbor seal and gray seal in the Piscataqua River. Anecdotal sighting information indicates that two hooded seals were observed from the Shipyard in August 2009, but no other observations have been recorded (Trefry November 20, 2015). Average density for the predicted seasons of occurrence was used to determine abundance of animals that could be present in the area for exposure. Since the average density for hooded seals is unknown and the animal is described as being rare, no authorized take of hooded seals is requested.

The total numbers of takes proposed for the five marine mammal species that may occur within the Navy's project area during the duration of proposed in-water construction activities are presented in Table 10.

TABLE 10—CALCULATIONS FOR INCIDENTAL TAKE ESTIMATION

Species	Animals in ensonified area/day	Number of days of activity	Proposed authorized takes	
			Level A	Level B
Harbor Porpoise	0.90	72	0	65
Gray Seal	0.21	72	0	15
Harbor Seal	0.19	72	0	14
Harp Seal	0.012	72	0	1
Total Exposures				95

Analysis and Preliminary Determinations

Negligible Impact

Negligible impact is "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival" (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, effects on habitat, and the status of the species.

To avoid repetition, the discussion of our analyses applies to all the species listed in Table 2, given that the anticipated effects of this pile driving project on marine mammals are expected to be relatively similar in nature. There is no information about the size, status, or structure of any species or stock that would lead to a different analysis for this activity, else species-specific factors would be identified and analyzed.

Pile driving activities associated with the Navy's Waterfront Improvement Projects, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) only, from underwater sounds generated from pile driving. Harassment takes could occur if individuals of these species are present in the ensonified zone when pile driving is happening.

No injury, serious injury, or mortality is anticipated given the nature of the activity and measures designed to minimize the possibility of injury to marine mammals. The potential for these outcomes is minimized through the implementation of the following planned mitigation measures. The Navy will employ a "soft start" when initiating impact driving activities. Given sufficient "notice" through use of soft start, marine mammals are expected to move away from a pile driving source. The Navy will delineate and monitor shutdown and disturbance zones while the likelihood of marine mammal detection by trained observers is high under the environmental conditions described for waters around the project area. Furthermore, shutdowns will occur if animals come within 10 meters of operational activity to avoid injury, serious injury, or mortality. The Navy's proposed activities are localized and of relatively short duration. The total time duration will amount to approximately 72 days.

The project also is not expected to have significant adverse effects on affected marine mammals' habitat, as analyzed in detail in the "Anticipated Effects on Marine Mammal Habitat" section. No important feeding and/or reproductive areas for marine mammals are known to be near the proposed project area. Project-related activities may cause some fish to leave the area

of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

These localized Level B exposures may cause brief startle reactions or short-term behavioral modification by the animals. Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.*, Thorson and Reyff, 2006; Lerma, 2014). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. These reactions and behavioral changes are expected to subside quickly when the exposures cease. The pile driving activities analyzed here are similar to, or less impactful than, numerous construction activities conducted in other similar locations, which have taken place with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment. Repeated exposures of individuals to levels of sound that may cause Level B harassment here are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. Thus, even repeated Level B harassment of some small subset of the species is unlikely to result in any significant realized decrease in fitness for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable impact through use of mitigation measures described herein. Finally, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the project area while the activity is occurring.

In summary, the negligible impact analysis is based on the following: (1) The possibility of injury, serious injury, or mortality may reasonably be considered discountable; (2) the anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior; (3) the absence of any significant habitat within the project area, including rookeries, significant haul-outs, or known areas or features of special significance for foraging or reproduction; and (4) the anticipated efficacy of the proposed mitigation measures in reducing the effects of the specified activity. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activity will have only short-term effects on individuals. The specified activity is not expected to impact rates of recruitment or survival and will therefore have a negligible impact on those species.

Therefore, based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the Navy's proposed Waterfront Improvement Projects will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

Table 11 illustrates the numbers of animals that could be exposed to Level B behavioral harassment thresholds from work associated with the proposed Waterfront Improvement Projects. The analyses provided represents <0.01% of the populations of these stocks that could be affected by Level B behavioral harassment. These are small numbers of marine mammals relative to the sizes of the affected species and population stocks under consideration.

TABLE 11—ESTIMATED NUMBER OF EXPOSURES AND PERCENTAGE OF STOCKS THAT MAY BE SUBJECT TO LEVEL B HARASSMENT

Species	Proposed authorized akes	Stock(s) abundance estimate	Percentage of total stock (percent)
Harbor Porpoise, Gulf of Maine/Bay of Fundy stock	65	79,883	<0.01
Gray Seal, Western North Atlantic stock	15	331,000	<0.01
Harbor Seal, Western North Atlantic stock	14	75,834	<0.01
Harp Seal, Western North Atlantic stock	1	7,100,000	<0.01

Based on the methods used to estimate take, and taking into consideration the implementation of the mitigation and monitoring measures, we preliminarily find that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

No species listed under the ESA are expected to be affected by these activities. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

The Navy has prepared a draft Environmental Assessment (*Waterfront Improvement Projects, Portsmouth Naval Shipyard, Kittery, ME*) in accordance with the National Environmental Policy Act (NEPA) and the regulations published by the Council on Environmental Quality. NMFS will independently evaluate the EA and determine whether or not to adopt it. We may prepare a separate NEPA analysis and incorporate relevant portions of Navy's EA by reference. Information in the Navy's application, EA, and this notice collectively provide the environmental information related to proposed issuance of this IHA for public review and comment. We will review all comments submitted in response to this notice as we complete the NEPA process, including a decision of whether to sign a Finding of No Significant Impact (FONSI), prior to a

final decision on the incidental take authorization request.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the Navy for Waterfront Improvements Projects at the Portsmouth Naval Shipyard in Kittery, Maine, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The proposed IHA language is provided next.

1. This Incidental Harassment Authorization (IHA) is valid from January 1, 2017 through December 31, 2017.

2. This Authorization is valid only for in-water construction work associated with Waterfront Improvement Projects at the Portsmouth Naval Shipyard in Kittery, Maine.

3. General Conditions

(a) A copy of this IHA must be in the possession of the Navy, its designees, and work crew personnel operating under the authority of this IHA.

(b) The species authorized for taking are harbor porpoise (*Phocoena phocoena*), gray seal (*Halichoerus grypus*), harbor seal (*Phoca vitulina*), and harp seal (*Pagophilus groenlandicus*).

(c) The taking, by Level B harassment only, is limited to the species listed in condition 3(b). See Table 1 below:

TABLE 1—AUTHORIZED TAKE NUMBERS

Species	Authorized takes—Level A	Authorized takes—Level B
Harbor Porpoise	0	65
Gray Seal	0	15
Harbor Seal	0	14
Harp Seal	0	1

(d) The taking by injury (Level A harassment), serious injury, or death of any of the species listed in condition 3(b) of the Authorization or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA.

(e) The Navy shall conduct briefings between construction supervisors and crews, marine mammal monitoring team, and staff prior to the start of all in-water pile driving, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

4. Mitigation Measures

The holder of this Authorization is required to implement the following mitigation measures:

(a) Time Restriction: For all in-water pile driving activities, the Navy shall operate only during daylight hours.

(b) Pile Driving Weather Delays: Pile driving shall only take place when the entire ZOI is visible and can be adequately monitored. If conditions (*e.g.*, fog) prevent the visual detection of marine mammals, activities with the potential to result in Level A or Level B harassment will not be initiated. If such conditions arise after the activity has begun, impact pile driving would be curtailed, but vibratory pile driving or extraction would be allowed to continue.

(c) If a marine mammal approaches the shutdown zone during the course of pile driving/removal operations, pile driving shall be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal.

(d) Establishment of Level A and B Harassment (ZOI)

(i) For all pile driving, the Navy shall implement a minimum shutdown zone of 10 m radius around the pile. If a marine mammal comes within or approaches the shutdown zone, such operations will cease. See Table 9 for minimum radial distances required for Level A and Level B disturbance zones.

(e) Use of Soft-start

(i) The project shall utilize soft start techniques for impact pile driving. The Navy shall conduct an initial set of three strikes from the impact hammer at 40 percent energy, followed by a 1-minute waiting period, then two subsequent three strike sets. Soft start shall be required for any impact driving, including at the beginning of the day, and at any time following a cessation of pile driving of thirty minutes or longer.

(ii) Whenever there has been downtime of 30 minutes or more without impact driving, the contractor shall initiate the driving with soft-start procedures described above.

(f) Standard mitigation measures

(i) For in-water heavy machinery work other than pile driving (using, *e.g.*, standard barges, tug boats), if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions.

(g) Visual Marine Mammal Monitoring and Observation

(i) A minimum of two MMOs shall be in place at the best practicable vantage points.

(ii) Monitoring will be conducted during all impact driving activity and during two-thirds of all vibratory driving activity

(iii) MMOs shall begin observing for marine mammals within the Level A and Level B harassment zones for 15 minutes before in-water pile driving begins. If a marine mammal(s) is present within the 10 meter shutdown zone prior to pile driving or during the "soft start" the start of pile driving shall be delayed until the animal(s) leaves the 10 meter shutdown zone. Pile driving shall resume only after the MMOs have determined, through sighting or by waiting 15 minutes, that the animal(s) has moved outside of and is on a path away from the 10 meter shutdown zone.

(iv) The individuals shall scan the waters within each monitoring zone activity using binoculars (25x or equivalent), hand held binoculars (7x) and visual observation

(v) The waters shall continue to be scanned for at least 30 minutes after pile driving has completed each day.

5. Monitoring and Reporting

The holder of this Authorization is required to submit a draft report on all monitoring conducted under the IHA 60 days prior to the issuance of a subsequent authorization, A final report shall be prepared and submitted within thirty days following resolution of comments on the draft report from NMFS. This report must contain the informational elements described in the Monitoring Plan, at a minimum and shall also include:

(a) Acoustic Monitoring

(i) The Navy shall conduct acoustic monitoring to ensure source levels are in line what is expected and therefore the Level A and Level B zones are accurate.

(b) Data Collection

(i) For all marine mammal and acoustic monitoring, information shall be recorded as described in the Monitoring Plan.

(c) Reporting Measures

(i) In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA, such as an injury (Level A harassment), serious injury or mortality (*e.g.*, ship-strike, gear interaction, and/or entanglement), the Navy shall immediately cease the specified activities and the Navy shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Northeast/Greater Atlantic Regional Stranding Coordinator within 24 hours of the discovery. The report would include the following information:

1. Time, date, and location (latitude/longitude) of the incident;

2. Name and type of vessel involved;
3. Vessel's speed during and leading up to the incident, if applicable;
4. Description of the incident;
5. Status of all sound source use in the 24 hours preceding the incident;
6. Water depth;
7. Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);
8. Description of all marine mammal observations in the 24 hours preceding the incident;
9. Species identification or description of the animal(s) involved;
10. Fate of the animal(s); and
11. Photographs or video footage of the animal(s) (if equipment is available).

(ii) Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with the Navy to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The Navy would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

(iii) In the event that the Navy discovers an injured or dead marine mammal, and the lead MMO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.*, in less than a moderate state of decomposition as described in the next paragraph), the Navy shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Northeast/Greater Atlantic Regional Stranding hotline and/or by email to the Northeast/Greater Atlantic Regional Stranding Coordinator within 24 hours of the discovery. The report shall include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with the Navy to determine whether modifications in the activities are appropriate.

(iv) In the event that the Navy discovers an injured or dead marine mammal, and the lead MMO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the Navy shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Northeast/Greater Atlantic Regional Stranding hotline and/or by email to the Northeast/Greater Atlantic Regional Stranding Coordinator within 24 hours of the discovery. The Navy would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

6. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

Request for Public Comments

NMFS requests comment on our analysis, the draft authorization, and any other aspect of the Notice of Proposed IHA for the Navy's Waterfront Improvement Projects at Portsmouth Navy Shipyard in Kittery, Maine. Please include with your comments any supporting data or literature citations to help inform our final decision on the Navy's request for an MMPA authorization.

Dated: August 3, 2016.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–18815 Filed 8–8–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE785

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Caribbean Fishery Management Council (Council) will hold its 157th meeting.

DATES: The meeting will be held on August 23–24, 2016. The Council will convene on Tuesday, August 23, 2016, from 9 a.m. to 5:30 p.m., and will reconvene on Wednesday, August 24, 2016, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Condado Vanderbilt Hotel, Condado Avenue, Condado, San Juan, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918; telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 157th regular Council Meeting to discuss the items contained in the following agenda:

August 23, 2016, 9 a.m.–5:30 p.m.

- Call to Order
- Election of Officers
- Adoption of Agenda
- Consideration of 156th Council Meeting Verbatim Transcriptions
- Executive Director's Report
- Scientific and Statistical Committee Report—Dr. Richard Appeldoorn
  - —Island Based Fishery Management Plans (IBFMPs)
  - —Acceptable Biological Catch Control Rule
- Island Based Fishery Management Plans (IBFMPs)
  - —Goals and Objectives of IBFMPs
  - —Review Action 1: Species to include for Federal Management in each IBFMP
  - —Review Action 2: Review Consolidated List of Stocks, and Stock and Species Complexes
  - —Review Action 3: Reference Points
  - —Update SEDAR 46 U.S. Caribbean Data Limited Species-Southeast Fisheries Science Center
  - —ABC Control Rule Work Group Report
  - —Recommendations to the CFMC on ABC Control Rule
  - —Consider Action 4: Framework Procedures for IBFMPs
  - —Consider Essential Fish Habitat (EFH) Designation for New Species in the IBFMPs and 5-year Review of EFH FMP
- CFMC Roadmap to Complete IBFMPs
- Data Collection in the USVI—Ruth Gómez
- Developing a Commercial Permit Program for the Snapper Unit 2 Fishery Operating in Puerto Rico EEZ Waters—Reconsideration of DRAFT Scoping Document

—PUBLIC COMMENT PERIOD—(5-minutes presentations)

August 24, 2016, 9 a.m.–5 p.m.

- Timing of Accountability Measures
  - —Results from Public Hearings
  - Next Step: Consider taking final action/Review codified text
- Development of Regulatory Amendment regarding ACL Overages and Application of Accountability Measures: Sector vs. Total ACL within a Fishery Management Unit
- Reports to CFMC
  - —Standing Committee for Recreational Sampling Plan Development
  - —Connectivity Studies Seasonally Closed Areas off the West Coast of

Puerto Rico: Fish Larvae Sources and Sinks. Where do Fish Larvae go to when Spawned in the ABT?—Dr. Jorge Capella
—2015 Spiny Lobster Survey Results—Aida Rosario
—Pelagic Fish Distribution—Ricardo López
○ Enforcement Issues
—Bottom Tending Gear: Legal Definition of Gear, Regulations in Place in Seasonally Closed Areas in the EEZ
—Atlantic HMS Caribbean Fisheries—Delisse Ortiz
○ Outreach and Education Report—Dr. Alida Ortíz
○ MREP Update—Helena Antoun
○ Enforcement Reports:
—Puerto Rico-DNER
—U.S. Virgin Islands-DPNR
—U.S. Coast Guard
—NMFS/NOAA
○ Meetings Attended by Council Members and Staff
PUBLIC COMMENT PERIOD—(5-minute presentations)
○ Other Business
○ Next Meeting(s)

The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. To further accommodate discussion and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

The meeting is open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be subjects for formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice, and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918, telephone (787) 766–5926, at least 5 days prior to the meeting date.

Dated: August 3, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–18775 Filed 8–8–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE791

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of teleconference.

SUMMARY: The North Pacific Fishery Management Council (Council) Electronic Monitoring Workgroup (EMWG) will hold a teleconference on August 25, 2016.

DATES: The meeting will be held on Thursday, August 25, 2016, from 8 a.m. to 5 p.m. (Alaska Time).

ADDRESSES: The meeting will be held telephonically at the following number: (907) 271–2896.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Diana Evans, Council staff; telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION:

Agenda

Thursday, August 25, 2016

The agenda will include an update on the 2016 pre-implementation program, review EM integration initial review draft analysis, review of the 2017 pre-implementation proposal, and other business and scheduling. The Agenda is subject to change, and the latest version will be posted at *http://www.npfmc.org/.*

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: August 3, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–18776 Filed 8–8–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs

AGENCY: Office for Coastal Management (OCM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of request for comment.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management will hold a public meeting to solicit comments on the performance evaluation of the New Hampshire Coastal Management Program.

DATES: *New Hampshire Coastal Management Program Evaluation:* The public meeting will be held on September 20, 2016, and written comments must be received on or before September 30, 2016.

For specific dates, times, and locations of the public meetings, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: You may submit comments on the program or reserve NOAA intends to evaluate by any of the following methods:

Public Meeting and Oral Comments: A public meeting will be held in Portsmouth, New Hampshire. For the specific location, see **SUPPLEMENTARY INFORMATION.**

Written Comments: Please direct written comments to Pam Kylstra, Program Development Specialist, Learning Services Division, Office for Coastal Management, 2234 S. Hobson Avenue, Charleston, South Carolina 29405, or email comments *Pam.Kylstra@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Pam Kylstra, Program Development Specialist, Learning Services Division, Office for Coastal Management, 2234 S. Hobson Avenue, Charleston, South Carolina 29405, or email comments *Pam.Kylstra@noaa.gov.* Copies of the previous evaluation findings and related material (including past performance reports and notices prepared by NOAA's Office for Coastal Management) may be obtained upon written request by contacting the person identified under

FOR FURTHER INFORMATION CONTACT. Copies of the most recent evaluation findings may also be downloaded or viewed on the Internet at *http://coast.noaa.gov/czm/evaluations.*

SUPPLEMENTARY INFORMATION: Section 312 of the Coastal Zone Management Act (CZMA) requires NOAA to conduct periodic evaluations of federally approved state and territorial coastal programs. The process includes one or more public meetings, consideration of written public comments and consultations with interested Federal, state, and local agencies and members of the public. During the evaluation, NOAA will consider the extent to which the state has met the national objectives, adhered to the management program approved by the Secretary of Commerce, and adhered to the terms of financial assistance under the CZMA. When the evaluation is completed, NOAA's Office for Coastal Management will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

Specific information on the periodic evaluation of the state and territorial coastal program that is the subject of this notice is detailed below as follows:

New Hampshire Coastal Management Program Evaluation

You may participate or submit oral comments at the public meeting scheduled as follows:

Date: September 20, 2016.

Time: 1:00 p.m., local time.

Location: 222 International Drive, Suite 175, Pease Tradeport, Portsmouth, New Hampshire 03801.

Written public comments must be received on or before September 30, 2016.

Federal Domestic Assistance Catalog 11.419.

Coastal Zone Management Program Administration

Dated July 27, 2016.

John King,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2016–18840 Filed 8–8–16; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE271

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Bravo Wharf Recapitalization Project

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that we have issued an incidental harassment authorization (IHA) to the U.S. Navy (Navy) to incidentally harass marine mammals during construction activities associated with the bravo wharf recapitalization project at Naval Station Mayport, FL.

DATES: This authorization is effective from December 1, 2016, through November 30, 2017.

FOR FURTHER INFORMATION CONTACT: Laura McCue, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of the Navy's application and supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the Internet at: *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* A memorandum describing our adoption of the Navy's Environmental Assessment (2016) and our associated Finding of No Significant Impact, prepared pursuant to the National Environmental Policy Act, are also available at the same site. In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified area, the incidental, but not intentional, taking of small numbers of marine mammals, providing that certain findings are made and the necessary prescriptions are established.

The incidental taking of small numbers of marine mammals may be allowed only if NMFS (through authority delegated by the Secretary) finds that the total taking by the specified activity during the specified time period will (i) have a negligible impact on the species or stock(s) and (ii) not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). Further, the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking must be set forth, either in specific regulations or in an authorization.

The allowance of such incidental taking under section 101(a)(5)(A), by harassment, serious injury, death, or a combination thereof, requires that regulations be established. Subsequently, a Letter of Authorization may be issued pursuant to the prescriptions established in such regulations, providing that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations. Under section 101(a)(5)(D), NMFS may authorize such incidental taking by harassment only, for periods of not more than one year, pursuant to requirements and conditions contained within an IHA. The establishment of prescriptions through either specific regulations or an authorization requires notice and opportunity for public comment.

NMFS has defined "negligible impact" in 50 CFR 216.103 as ". . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as: ". . . any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]."

Summary of Request

On July 21, 2015, we received a request from the Navy for authorization of the taking, by Level B harassment only, of marine mammals, incidental to pile driving in association with the Bravo Wharf recapitalization project at Naval Station Mayport (NSM), Florida.

That request was modified on November 4 and November 10, and a final version, which we deemed adequate and complete, was submitted on November 17. In-water work associated with the project is expected to be completed within the one-year timeframe of the IHA (December 1, 2016 through November 30, 2017).

The use of both vibratory and impact pile driving is expected to produce underwater sound at levels that have the potential to result in behavioral harassment of marine mammals. One species of marine mammal has the potential to be affected by the specified activities: Bottlenose dolphin (*Tursiops truncatus truncatus*). This species may occur year-round in the action area.

Similar wharf construction and pile driving activities in Naval Station Mayport have been authorized by NMFS in the past for a different construction project at Wharf C. The first authorization was effective between September 1, 2014 through August 31, 2015 (79 FR 27863; May 5, 2014), and the second authorization, which is currently ongoing, is effective from September 8, 2015 through September 7, 2016 (80 FR 55598; September 16, 2015).

Description of the Specified Activity

Overview

Bravo Wharf is a medium draft, general purpose berthing wharf that was constructed in 1970 and lies at the western edge of the NSM turning basin. Bravo Wharf is approximately 2,000 ft long, 125 ft wide, and has a berthing depth of 50 ft mean lower low water. The wharf is one of two primary deep draft berths at the basin and is capable of berthing ships up to and including large amphibious ships; it is one of three primary ordnance handling berths at the basin. The wharf is a diaphragm steel sheet pile cell structure with a concrete apron, partial concrete encasement of the piling and asphalt paved deck. The wharf is currently in poor condition due to advanced deterioration of the steel sheeting and lack of corrosion protection. This structural deterioration has resulted in the institution of load restrictions within 60 ft of the wharf face. The purpose of this project is to complete necessary repairs to Bravo Wharf. Please refer to the Navy's application for a schematic of the project plan.

Dates and Duration

The total project is expected to require a maximum of 130 days of in-water pile driving. The project may require up to 24 months for completion; in-water activities are limited to a maximum of 130 days, separated into two phases. If in-water work will extend beyond the effective dates of the IHA, a second IHA application will be submitted by the Navy. There will be a maximum of 110 days for vibratory pile driving (73 days in phase I and 37 days in phase II), and a contingent 20 days of impact pile driving. The specified activities are expected to occur between December 1, 2016 and November 30, 2017.

Specific Geographic Region

NSM is located in northeastern Florida, at the mouth of the St. Johns River and adjacent to the Atlantic Ocean (see Figures 2–1 and 2–2 of the Navy's application). The St. Johns River is the longest river in Florida, with the final 35 mi flowing through the city of Jacksonville. This portion of the river is significant for commercial shipping and military use. At the mouth of the river, near the action area, the Atlantic Ocean is the dominant influence and typical salinities are above 30 ppm. Outside the river mouth, in nearshore waters, moderate oceanic currents tend to flow southward parallel to the coast. Sea surface temperatures range from around 16 °C in winter to 28 °C in summer.

The specific action area consists of the NSM turning basin, an area of approximately 2,000 by 3,000 ft containing ship berthing facilities at 16 locations along wharves around the basin perimeter. The basin was constructed during the early 1940s by dredging the eastern part of Ribault Bay (at the mouth of the St. Johns River), with dredge material from the basin used to fill parts of the bay and other low-lying areas in order to elevate the land surface. The basin is currently maintained through regular dredging at a depth of 50 ft, with depths at the berths ranging from 30–50 ft. The turning basin, connected to the St. Johns River by a 500-ft-wide entrance channel, will largely contain sound produced by project activities, with the exception of sound propagating east into nearshore Atlantic waters through the entrance channel (see Figure 2–2 of the Navy's application). Bravo Wharf is located in the western corner of the Mayport turning basin.

Detailed Description of Activities

In order to rehabilitate Bravo Wharf, the Navy proposes to install a new steel sheet pile bulkhead at Bravo Wharf. The project consists of installing a total of approximately 880 single sheet piles (Phase I—berths B–2 and B–3: 590; Phase II—berth B–1: 290). The wall will be anchored at the top and fill consisting of clean gravel and flowable concrete fill will be placed behind the wall. A concrete cap will be formed along the top and outside face of the wall to tie the entire structure together and provide a berthing surface for vessels. The new bulkhead will be designed for a fifty-year service life.

All piles will be driven by vibratory hammer, although impact pile driving may be used as a contingency in cases when vibratory driving is not sufficient to reach the necessary depth. In the unlikely event that impact driving is required, either impact or vibratory driving could occur on a given day, but concurrent use of vibratory and impact drivers will not occur. The Navy estimates that a total of 130 in-water work days may be required to complete pile driving activity, which includes 20 days for contingency impact driving, if necessary.

Comments and Responses

We published a notice of receipt of the Navy's application and proposed IHA in the **Federal Register** on December 7, 2015 (80 FR 75978). We received one comment, a letter from the Marine Mammal Commission concurring with NMFS's preliminary findings.

Comment: The Commission recommends the issuance of the IHA, subject to the inclusion of the proposed mitigation, monitoring, and reporting measures.

Response: We value the Commission's input and support and appreciate their concurrence with our findings. We look forward to working with them on similar issues in the future.

Description of Marine Mammals in the Area of the Specified Activity

There are four marine mammal species which may inhabit or transit through the waters nearby NSM at the mouth of the St. Johns River and in nearby nearshore Atlantic waters. These include the bottlenose dolphin, Atlantic spotted dolphin (*Stenella frontalis*), North Atlantic right whale (*Eubalaena glacialis*), and humpback whale (*Megaptera novaeangliae*). Multiple additional cetacean species occur in South Atlantic waters but would not be expected to occur in shallow nearshore waters of the action area. Table 1 lists the marine mammal species with expected potential for occurrence in the vicinity of NSM during the project timeframe and summarizes key information regarding stock status and abundance. Taxonomically, we follow Committee on Taxonomy (2014). Please see NMFS' Stock Assessment Reports (SAR), available at *www.nmfs.noaa.gov/*

pr/sars, for more detailed accounts of these stocks' status and abundance. Please also refer to NMFS' Web site (*www.nmfs.noaa.gov/pr/species/mammals*) for generalized species accounts and to the Navy's Marine Resource Assessment for the Charleston/Jacksonville Operating Area, which documents and describes the marine resources that occur in Navy operating areas of the Southeast (DoN, 2008). The document is publicly available at *www.navfac.navy.mil/products_and_services/ev/products_and_services/marine_resources/marine_resource_assessments.html* (accessed November 2, 2015). We provided additional information for marine mammals with potential for occurrence in the area of the specified activity in our **Federal Register** notice of proposed authorization (December 7, 2015; 80 FR 75978). For reasons discussed in detail in the notice of proposed authorization, right whales, humpback whales, and spotted dolphins are unlikely to occur in the project area and are not considered further.

TABLE 1—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF NSM

Species	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR [3]	Annual M/SI [4]	Relative occurrence; season of occurrence
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenidae						
North Atlantic right whale.	Western North Atlantic [5]	E/D; Y	476 (0; 476; 2013)	1	4.3	Rare inshore, regular near/offshore; Nov–Apr.
Humpback whale	Gulf of Maine	E/D; Y	823 (0; 823; 2008)	2.7	7.6	Rare; Fall–Spring.
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae						
Atlantic spotted dolphin	Western North Atlantic ..	-; N	44,715 (0.43; 31,610; 2011).	316	0	Rare; year-round.
Common bottlenose dolphin.	Western North Atlantic Offshore.	-; N	77,532 (0.4; 56,053; 2011).	561	43.9	Rare; year-round.
	Western North Atlantic Coastal, Southern Migratory.	-/D; Y	9,173 (0.46; 6,326; 2010–11).	63	0–12	Possibly common; [8] Jan–Mar.
	Western North Atlantic Coastal, Northern Florida.	-/D; Y	1,219 (0.67; 730; 2010–11).	7	0.4	Possibly common; [8] year-round.
	Jacksonville Estuarine System. [6]	-; Y	412 [7] (0.06; unk; 1994–97).	undet	1.2	Possibly common; [8] year-round.

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR (see footnote 3) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable. For certain stocks, abundance estimates are actual counts of animals and there is no associated CV. The most recent abundance survey that is reflected in the abundance estimate is presented; there may be more recent surveys that have not yet been incorporated into the estimate.

[3] Potential biological removal, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size.

[4] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, subsistence hunting, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value. All values presented here are from the draft 2015 SARs (*www.nmfs.noaa.gov/pr/sars/draft.htm*).

[5] Abundance estimates (and resulting PBR values) for these stocks are new values presented in the draft 2015 SARs. This information was made available for public comment and is currently under review and therefore may be revised prior to finalizing the 2015 SARs. However, we consider this information to be the best available for use in this document.

[6] Abundance estimates for these stocks are greater than eight years old and are therefore not considered current. PBR is considered undetermined for these stocks, as there is no current minimum abundance estimate for use in calculation. We nevertheless present the most recent abundance estimates and PBR values, as these represent the best available information for use in this document.

[7] This abundance estimate is considered an overestimate because it includes non- and seasonally-resident animals.

[8] Bottlenose dolphins in general are common in the project area, but it is not possible to readily identify them to stock. Therefore, these three stocks are listed as possibly common as we have no information about which stock commonly only occurs.

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

Our **Federal Register** notice of proposed authorization (December 7, 2015; 80 FR 75978) provides a general background on sound relevant to the specified activity as well as a detailed description of marine mammal hearing and of the potential effects of these construction activities on marine mammals and their habitat.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

Measurements from similar pile driving events were coupled with practical spreading loss to estimate

zones of influence (ZOI; see Estimated Take by Incidental Harassment); these values were used to develop mitigation measures for pile driving activities at NSM. The ZOIs effectively represent the mitigation zone that will be established around each pile to prevent Level A harassment to marine mammals, while providing estimates of the areas within which Level B harassment might occur. In addition to the specific measures described later in this section, the Navy will conduct briefings between construction supervisors and crews, marine mammal monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

Monitoring and Shutdown for Pile Driving

The following measures will apply to the Navy's mitigation through shutdown and disturbance zones:

Shutdown Zone—For all pile driving activities, the Navy will establish a shutdown zone intended to contain the area in which sound pressure levels (SPLs) equal or exceed the 180 dB rms acoustic injury criteria. The purpose of a shutdown zone is to define an area within which shutdown of activity will occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area), thus preventing injury of marine mammals (as described in our notice of proposed authorization, serious injury or death are unlikely outcomes even in the absence of mitigation measures). Modeled radial distances for shutdown zones are shown in Table 2. However, a minimum shutdown zone of 15 m (which is larger than the maximum predicted injury zone) will be established during all pile driving activities, regardless of the estimated zone. Vibratory pile driving activities are not predicted to produce sound exceeding the 180-dB Level A harassment threshold, but these precautionary measures are intended to prevent the already unlikely possibility of physical interaction with construction equipment and to further reduce any possibility of acoustic injury. For impact driving of steel piles, if necessary, the radial distance of the shutdown will be established at 40 m.

Disturbance Zone—Disturbance zones are the areas in which SPLs equal or exceed 160 and 120 dB rms (for impulse and continuous sound, respectively). Disturbance zones provide utility for monitoring conducted for mitigation purposes (*i.e.,* shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of disturbance zones enables observers to be aware of and communicate the presence of marine mammals in the project area but outside the shutdown zone and thus prepare for potential shutdowns of activity. However, the primary purpose of disturbance zone monitoring is for documenting incidents of Level B harassment; disturbance zone monitoring is discussed in greater detail later (see Proposed Monitoring and Reporting). Nominal radial distances for disturbance zones are shown in Table 2. Given the size of the disturbance zone for vibratory pile driving, it is impossible to guarantee that all animals would be observed or to make comprehensive observations of fine-scale behavioral reactions to sound, and only a portion of the zone (*e.g.,* what may be reasonably observed by visual observers stationed within the turning basin) will be observed.

In order to document observed incidents of harassment, monitors record all marine mammal observations, regardless of location. The observer's location, as well as the location of the pile being driven, is known from a GPS. The location of the animal is estimated as a distance from the observer, which is then compared to the location from the pile. It may then be estimated whether the animal was exposed to sound levels constituting incidental harassment on the basis of predicted distances to relevant thresholds in post-processing of observational and acoustic data, and a precise accounting of observed incidences of harassment created. This information may then be used to extrapolate observed takes to reach an approximate understanding of actual total takes.

Monitoring Protocols—Monitoring will be conducted before, during, and after pile driving activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven. Observations made outside the shutdown zone will not result in shutdown; that pile segment will be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities will be halted. Monitoring will take place from 15 minutes prior to initiation through 30 minutes post-completion of pile driving activities. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes. Please see the Monitoring Plan (*www.nmfs.noaa.gov/pr/permits/incidental/construction.htm*), developed by the Navy in agreement with NMFS, for full details of the monitoring protocols.

The following additional measures apply to visual monitoring:

(1) Monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Qualified observers are typically trained biologists, with the following minimum qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

(2) Prior to the start of pile driving activity, the shutdown zone will be monitored for 15 minutes to ensure that it is clear of marine mammals. Pile driving will only commence once observers have declared the shutdown zone clear of marine mammals; animals will be allowed to remain in the shutdown zone (*i.e.,* must leave of their own volition) and their behavior will be monitored and documented. The shutdown zone may only be declared clear, and pile driving started, when the

entire shutdown zone is visible (*i.e.,* when not obscured by dark, rain, fog, *etc.*). In addition, if such conditions should arise during impact pile driving that is already underway, the activity will be halted.

(3) If a marine mammal approaches or enters the shutdown zone during the course of pile driving operations, activity will be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal. Monitoring will be conducted throughout the time required to drive a pile.

Soft Start

The use of a soft start procedure is believed to provide additional protection to marine mammals by warning or providing a chance to leave the area prior to the hammer operating at full capacity, and typically involves a requirement to initiate sound from the hammer at reduced energy followed by a waiting period. This procedure is repeated two additional times. It is difficult to specify the reduction in energy for any given hammer because of variation across drivers and, for impact hammers, the actual number of strikes at reduced energy will vary because operating the hammer at less than full power results in "bouncing" of the hammer as it strikes the pile, resulting in multiple "strikes." For impact driving, we require an initial set of three strikes from the impact hammer at reduced energy, followed by a thirty-second waiting period, then two subsequent three strike sets. Soft start will be required at the beginning of each day's impact pile driving work and at any time following a cessation of impact pile driving of 30 minutes or longer.

We have carefully evaluated the Navy's proposed mitigation measures and considered their effectiveness in past implementation to determine whether they are likely to effect the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals, (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation.

Any mitigation measure(s) we prescribe should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

(2) A reduction in the number (total number or number at biologically important time or location) of individual marine mammals exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(3) A reduction in the number (total number or number at biologically important time or location) of times any individual marine mammal would be exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(4) A reduction in the intensity of exposure to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing the severity of behavioral harassment only).

(5) Avoidance or minimization of adverse effects to marine mammal habitat, paying particular attention to the prey base, blockage or limitation of passage to or from biologically important areas, permanent destruction of habitat, or temporary disturbance of habitat during a biologically important time.

(6) For monitoring directly related to mitigation, an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the Navy's proposed measures, as well as any other potential measures that may be relevant to the specified activity, we have determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for incidental take authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Any monitoring requirement we prescribe should improve our understanding of one or more of the following:

- Occurrence of marine mammal species in action area (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) Affected species (*e.g.,* life history, dive patterns); (3) Co-occurrence of marine mammal species with the action; or (4) Biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual responses to acute stressors, or impacts of chronic exposures (behavioral or physiological).
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of an individual; or (2) Population, species, or stock.
- Effects on marine mammal habitat and resultant impacts to marine mammals.
- Mitigation and monitoring effectiveness.

The Navy's planned monitoring and reporting is also described in their Marine Mammal Monitoring Plan, on the Internet at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.*

Visual Marine Mammal Observations

The Navy will collect sighting data and behavioral responses to construction for marine mammal species observed in the region of activity during the period of activity. All observers (MMOs) will be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. The Navy will monitor the shutdown zone and disturbance zone before, during, and after pile driving, with observers located at the best practicable vantage points. Based on our requirements, the Navy will implement the following procedures for pile driving:

- MMOs will be located at the best vantage point(s) in order to properly see the entire shutdown zone and as much of the disturbance zone as possible.
- During all observation periods, observers will use binoculars and the naked eye to search continuously for marine mammals.

• If the shutdown zones are obscured by fog or poor lighting conditions, pile driving at that location will not be initiated until that zone is visible. Should such conditions arise while impact driving is underway, the activity will be halted.

• The shutdown and disturbance zones around the pile will be monitored for the presence of marine mammals before, during, and after any pile driving or removal activity.

Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. The monitoring biologists will use their best professional judgment throughout implementation and seek improvements to these methods when deemed appropriate. Any modifications to protocol will be coordinated between NMFS and the Navy.

Data Collection

We require that observers use approved data forms. Among other pieces of information, the Navy will record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. In addition, the Navy will attempt to distinguish between the number of individual animals taken and the number of incidences of take. We require that, at a minimum, the following information be collected on the sighting forms:

• Date and time that monitored activity begins or ends;

• Construction activities occurring during each observation period;

• Weather parameters (*e.g.,* percent cover, visibility);

• Water conditions (*e.g.,* sea state, tide state);

• Species, numbers, and, if possible, sex and age class of marine mammals;

• Description of any observable marine mammal behavior patterns, including bearing and direction of travel, and if possible, the correlation to SPLs;

• Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;

• Description of implementation of mitigation measures (*e.g.,* shutdown or delay);

• Locations of all marine mammal observations; and

• Other human activity in the area.

Reporting

A draft report will be submitted to NMFS within 90 days of the completion of marine mammal monitoring, or 60 days prior to the requested date of issuance of any future IHA for projects at the same location, whichever comes first. The report will include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days, and will also provide descriptions of any behavioral responses to construction activities by marine mammals and a complete description of all mitigation shutdowns and the results of those actions and an extrapolated total take estimate based on the number of marine mammals observed during the course of construction. A final report must be submitted within 30 days following resolution of comments on the draft report.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as: ". . . any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]."

All anticipated takes would be by Level B harassment resulting from vibratory and impact pile driving and involving temporary changes in behavior. The planned mitigation and monitoring measures are expected to minimize the possibility of injurious or lethal takes such that take by Level A harassment, serious injury, or mortality is considered discountable. However, it is unlikely that injurious or lethal takes would occur even in the absence of the planned mitigation and monitoring measures.

If a marine mammal responds to a stimulus by changing its behavior (*e.g.,* through relatively minor changes in locomotion direction/speed or vocalization behavior), the response may or may not constitute taking at the individual level, and is unlikely to affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on animals or on the stock or species could potentially be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007). Given the many uncertainties in predicting the quantity and types of impacts of sound on marine mammals, it is common practice to estimate how many animals are likely to be present within a particular distance of a given activity, or exposed to a particular level of sound. In practice, depending on the amount of information available to characterize daily and seasonal movement and distribution of affected marine mammals, it can be difficult to distinguish between the number of individuals harassed and the instances of harassment and, when duration of the activity is considered, it can result in a take estimate that overestimates the number of individuals harassed. In particular, for stationary activities, it is more likely that some smaller number of individuals may accrue a number of incidences of harassment per individual than for each incidence to accrue to a new individual, especially if those individuals display some degree of residency or site fidelity and the impetus to use the site (*e.g.,* because of foraging opportunities) is stronger than the deterrence presented by the harassing activity.

The turning basin is not considered important habitat for marine mammals, as it is a man-made, semi-enclosed basin with frequent industrial activity and regular maintenance dredging. The surrounding waters may be an important foraging habitat for the dolphins; however the small area of ensonification does not extend outside of the turning basin and into this foraging habitat (see Figure 6–1 in the Navy's application). Therefore, behavioral disturbances that could result from anthropogenic sound associated with these activities are expected to affect only a relatively small number of individual marine mammals that may venture near the turning basin, although those effects could be recurring over the life of the project if the same individuals remain in the project vicinity. The Navy has requested authorization for the incidental taking of small numbers of bottlenose dolphins in the Mayport turning basin that may result from pile driving during construction activities associated with the project described previously in this document.

In order to estimate the potential incidents of take that may occur incidental to the specified activity, we must first estimate the extent of the sound field that may be produced by the activity and then consider in combination with information about marine mammal density or abundance in the project area. We described applicable sound thresholds for determining effects to marine mammals before describing the information used in estimating the sound fields, the

available marine mammal density or abundance information, and the method of estimating potential incidents of take in detail in our **Federal Register** notice of proposed authorization (August 5, 2015; 80 FR 46545). All calculated distances to and the total area encompassed by the marine mammal sound thresholds are provided in Table 2.

TABLE 2—DISTANCES TO RELEVANT UNDERWATER SOUND THRESHOLDS AND AREAS OF ENSONIFICATION

Pile type	Method	Threshold	Distance (m) [1]	Area (km²)
Steel sheet piles	Vibratory	Level A harassment (180 dB)	0	0
		Level B harassment (120 dB)	1,166	0.614439
	Impact	Level A harassment (180 dB)	40	0.002
		Level B harassment (160 dB)	858	0.51

[1] Areas presented take into account attenuation and/or shadowing by land. Calculated distances to relevant thresholds cannot be reached in most directions form source piles. Please see Figures 6–1 and 6–2 in the Navy's application.

The Mayport turning basin does not represent open water, or free field, conditions. Therefore, sounds would attenuate as per the confines of the basin, and may only reach the full estimated distances to the harassment thresholds via the narrow, east-facing entrance channel. Distances shown in Table 2 are estimated for free-field conditions, but areas are calculated per the actual conditions of the action area. See Figures 6–1 and 6–2 of the Navy's application for a depiction of areas in which each underwater sound threshold is predicted to occur at the project area due to pile driving.

Marine Mammal Densities

For all species, the best scientific information available was considered for use in the marine mammal take assessment calculations. Density for bottlenose dolphins is derived from site-specific surveys conducted by the Navy (see Appendix C of the Navy's application for more information); it is not currently possible to identify observed individuals to stock.

The following assumptions are made when estimating potential incidents of take:

- All marine mammal individuals potentially available are assumed to be present within the relevant area, and thus incidentally taken;
- An individual can only be taken once during a 24-h period; and,
- There will be 110 total days of vibratory driving (73 days in phase I and 37 days in phase II) and 20 days of impact pile driving.
- Exposures to sound levels at or above the relevant thresholds equate to take, as defined by the MMPA.

The estimation of marine mammal takes typically uses the following calculation:

Exposure estimate = (n * ZOI) * days of total activity

Where:

n = density estimate used for each species/season

ZOI = sound threshold ZOI area; the area encompassed by all locations where the SPLs equal or exceed the threshold being evaluated

n * ZOI produces an estimate of the abundance of animals that could be present in the area for exposure, and is rounded to the nearest whole number before multiplying by days of total activity.

The ZOI impact area is estimated using the relevant distances in Table 2, taking into consideration the possible affected area with attenuation due to the constraints of the basin. Because the basin restricts sound from propagating outward, with the exception of the east-facing entrance channel, the radial distances to thresholds are not generally reached.

There are a number of reasons why estimates of potential incidents of take may be conservative, assuming that available density or abundance estimates and estimated ZOI areas are accurate. We assume, in the absence of information supporting a more refined conclusion, that the output of the calculation represents the number of individuals that may be taken by the specified activity. In fact, in the context of stationary activities such as pile driving and in areas where resident animals may be present, this number more realistically represents the number of incidents of take that may accrue to a smaller number of individuals. While pile driving can occur any day throughout the in-water work window, and the analysis is conducted on a per day basis, only a fraction of that time (typically a matter of hours on any given day) is actually spent pile driving. The potential effectiveness of mitigation measures in reducing the number of takes is typically not quantified in the take estimation process. For these reasons, these take estimates may be conservative.

The quantitative exercise described above indicates that no incidents of Level A harassment would be expected, independent of the implementation of required mitigation measures. See Table 3 for total estimated incidents of take.

TABLE 3—CALCULATIONS FOR INCIDENTAL TAKE ESTIMATION

Species	n (animals/km²)	Activity	n * ZOI [1]	Proposed authorized takes [2]
Phase I (73 days)				
Bottlenose dolphin [3]	4.15366	Vibratory driving	3	219
Phase II (37 days)				
Bottlenose dolphin [3]	4.15366	Vibratory driving	3	111

TABLE 3—CALCULATIONS FOR INCIDENTAL TAKE ESTIMATION—Continued

Species	n (animals/km²)	Activity	n * ZOI [1]	Proposed authorized takes [2]
Contingency impact driving (20 days)				
Bottlenose dolphin [3]	4.15366	Impact driving	2	40
Total exposures				370

[1] See Table 2 for relevant ZOIs. The product of this calculation is rounded to the nearest whole number.
[2] The product of n * ZOI is multiplied by the total number of activity-specific days to estimate the number of takes.
[3] It is impossible to estimate from available information which stock these takes may accrue to.

Analyses and Determinations

Negligible Impact Analysis

NMFS has defined "negligible impact" in 50 CFR 216.103 as ". . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through behavioral harassment, we consider other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

Pile driving activities associated with the wharf construction project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) only, from underwater sounds generated from pile driving. Potential takes could occur if individuals of these species are present in the ensonified zone when pile driving is happening.

No injury, serious injury, or mortality is anticipated given the nature of the activities and measures designed to minimize the possibility of injury to marine mammals. The potential for these outcomes is minimized through the construction method and the implementation of the planned mitigation measures. Specifically, vibratory hammers will be the primary method of installation (impact driving is included only as a contingency and is not expected to be required), and this activity does not have the potential to cause injury to marine mammals due to the relatively low source levels produced (less than 180 dB) and the lack of potentially injurious source characteristics. Impact pile driving produces short, sharp pulses with higher peak levels and much sharper rise time to reach those peaks. If impact driving is necessary, implementation of soft start and shutdown zones significantly reduces any possibility of injury. Given sufficient "notice" through use of soft start (for impact driving), marine mammals are expected to move away from a sound source that is annoying prior to it becoming potentially injurious. Environmental conditions in the confined and protected Mayport turning basin mean that marine mammal detection ability by trained observers is high, enabling a high rate of success in implementation of shutdowns to avoid injury.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff, 2006; HDR, Inc., 2012). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. The pile driving activities analyzed here are similar to, or less impactful than, numerous other construction activities conducted in San Francisco Bay and in the Puget Sound region, which have taken place with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment. These activities are also nearly identical to the pile driving activities that took place at Wharf C–2 at NSM, which also reported zero injuries or mortality to marine mammals and no known long-term adverse consequences from behavioral harassment. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the turning basin while the activity is occurring.

In summary, this negligible impact analysis is founded on the following factors: (1) The possibility of injury, serious injury, or mortality may reasonably be considered discountable; (2) the anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior; (3) the absence of any significant habitat within the project area, including known areas or features of special significance for foraging or reproduction; (4) the presumed efficacy of the planned mitigation measures in reducing the effects of the specified activity to the level of least practicable impact. In addition, these stocks are not listed under the ESA, although coastal bottlenose dolphins are designated as depleted under the MMPA. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activity will have only short-term effects on individuals. The specified activity is not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

Based on the analysis contained herein of the likely effects of the

specified activity on marine mammals and their habitat, and taking into consideration the implementation of the planned monitoring and mitigation measures, we find that the total marine mammal take from the Navy's wharf construction activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers Analysis

As described previously, of the 370 incidents of behavioral harassment predicted to occur for bottlenose dolphin, we have no information allowing us to parse those predicted incidents amongst the three stocks of bottlenose dolphin that may occur in the project area. Therefore, we assessed the total number of predicted incidents of take against the best abundance estimate for each stock, as though the total would occur for the stock in question. For one of the bottlenose dolphin stocks, the total predicted number of incidents of take authorized would be considered small—approximately four percent for the southern migratory stock—even if each estimated taking occurred to a new individual. This is an extremely unlikely scenario as, for bottlenose dolphins in estuarine and nearshore waters, there is likely to be some overlap in individuals present day-to-day.

The total number of authorized takes for bottlenose dolphins, if assumed to accrue solely to new individuals of the Jacksonville Estuarine Stock (JES) or northern Florida coastal stocks, is higher relative to the total stock abundance, which is currently considered unknown for the JES stock and is 1,219 for the northern Florida coastal stock. However, these numbers represent the estimated incidents of take, not the number of individuals taken. That is, it is highly likely that a relatively small subset of these bottlenose dolphins will be harassed by project activities.

JES bottlenose dolphins range from Cumberland Sound at the Georgia-Florida border south to approximately Palm Coast, Florida, an area spanning over 120 linear km of coastline and including habitat consisting of complex inshore and estuarine waterways. JES dolphins, divided by Caldwell (2001) into Northern and Southern groups, show strong site fidelity and, although members of both groups have been observed outside their preferred areas, it is likely that the majority of JES dolphins would not occur within waters ensonified by project activities.

In the western North Atlantic, the Northern Florida Coastal Stock is present in coastal Atlantic waters from the Georgia/Florida border south to 29.4° N. (Waring *et al.,* 2014), a span of more than 90 miles. There is no obvious boundary defining the offshore extent of this stock. They occur in waters less than 20 m deep; however, they may also occur in lower densities over the continental shelf (waters between 20 m and 100 m depth) and overlap spatially with the offshore morphotype (Waring *et al.,* 2014).

In summary, JES dolphins are known to form two groups and exhibit strong site fidelity (*i.e.,* individuals do not generally range throughout the recognized overall JES stock range); and neither stock is expected to occur at all in a significant portion of the larger ZOI, which is almost entirely confined within NSM. Given that the specified activity will be stationary within an enclosed basin not recognized as an area of any special significance that would serve to attract or aggregate dolphins, we therefore believe that the estimated numbers of takes, were they to occur, likely represent repeated exposures of a much smaller number of bottlenose dolphins and that these estimated incidents of take represent small numbers of bottlenose dolphins.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, we find that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, we have determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

No marine mammal species listed under the ESA are expected to be affected by these activities. Therefore, we have determined that section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), the Navy prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the human environment resulting from the bravo wharf recapitalization project. NMFS made the Navy's EA available to the public for review and comment, in relation to its suitability for adoption by NMFS in order to assess the impacts to the human environment of issuance of an IHA to the Navy. Also in compliance with NEPA and the CEQ regulations, as well as NOAA Administrative Order 216–6, NMFS has reviewed the Navy's EA, determined it to be sufficient, and adopted that EA and signed a Finding of No Significant Impact (FONSI) in July, 2016. The 2016 NEPA documents are available at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.*

Authorization

As a result of these determinations, we have issued an IHA to the Navy for conducting the described construction activities at the Bravo Wharf at NSM, Jacksonville, FL for one year of issuance, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: August 4, 2016.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–18846 Filed 8–8–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE744

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Pier Replacement Project

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to construction activities as part of a pier replacement project. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to the Navy to incidentally take marine mammals, by

Level B Harassment only, during the specified activity.

DATES: Comments and information must be received no later than September 8, 2016.

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Laws@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted to the Internet at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm* without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of the Navy's application and supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the Internet at: *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* In case of problems accessing these documents, please call the contact listed above.

National Environmental Policy Act (NEPA)

The Navy prepared an Environmental Assessment (EA; 2013) for this project. We subsequently adopted the EA and signed our own Finding of No Significant Impact (FONSI) prior to issuing the first IHA for this project, in accordance with NEPA and the regulations published by the Council on Environmental Quality. Information in the Navy's application, the Navy's EA, and this notice collectively provide the environmental information related to proposed issuance of this IHA for public review and comment. All documents are available at the aforementioned Web site. We will review all comments submitted in response to this notice as we complete the NEPA process, including a decision of whether the existing EA and FONSI provide adequate analysis related to the potential environmental effects of issuing an IHA to the Navy, prior to a final decision on the incidental take authorization request.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as ". . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization. Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as "any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]."

Summary of Request

On June 16, 2016, we received a request from the Navy for authorization to take marine mammals incidental to pile installation and demolition associated with a pier replacement project in San Diego Bay at Naval Base Point Loma in San Diego, CA (NBPL), including a separate monitoring plan. The Navy also submitted a draft monitoring report on June 2, 2016, pursuant to requirements of the previous IHA. The Navy submitted revised versions of the request and monitoring plan on August 3, 2016, and a revised monitoring report on July 12, 2016. These documents were deemed adequate and complete. The pier replacement project is planned to occur over multiple years; this proposed IHA would cover only the fourth year of work and would be valid for a period of one year from the date of issuance. Hereafter, use of the generic term "pile driving" may refer to both pile installation and removal unless otherwise noted.

The use of both vibratory and impact pile driving, as well as various demolition techniques, is expected to produce underwater sound at levels that have the potential to result in behavioral harassment of marine mammals. Species with the expected potential to be present during all or a portion of the in-water work window include the California sea lion (*Zalophus californianus*), harbor seal (*Phoca vitulina richardii*), northern elephant seal (*Mirounga angustirostris*), gray whale (*Eschrichtius robustus*), bottlenose dolphin (*Tursiops truncatus truncatus*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), Risso's dolphin (*Grampus griseus*), and either short-beaked or long-beaked common dolphins (*Delphinus* spp.). California sea lions are present year-round and are very common in the project area, while bottlenose dolphins and harbor seals are common and likely to be present year-round but with more variable occurrence in San Diego Bay. Gray whales may be observed in San Diego Bay sporadically during migration periods. The remaining species are known to occur in nearshore waters outside San Diego Bay, but are generally only rarely observed near or in the bay. However, recent observations indicate that these species may occur in the project area and therefore could potentially be subject to incidental

harassment from the aforementioned activities.

This would be the fourth such IHA, if issued, following the IHAs issued effective from September 1, 2013, through August 31, 2014 (78 FR 44539), from October 8, 2014, through October 7, 2015 (79 FR 65378), and from October 8, 2015, through October 7, 2016 (80 FR 62032). Monitoring reports are available on the Internet at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm* and provide environmental information related to proposed issuance of this IHA for public review and comment.

Description of the Specified Activity

Overview

NBPL provides berthing and support services for Navy submarines and other fleet assets. The existing fuel pier serves as a fuel depot for loading and unloading tankers and Navy underway replenishment vessels that refuel ships at sea ("oilers"), as well as transferring fuel to local replenishment vessels and other small craft operating in San Diego Bay, and is the only active Navy fueling facility in southern California. Portions of the pier are over one hundred years old, while the newer segment was constructed in 1942. The pier as a whole is significantly past its design service life and does not meet current construction standards.

The Navy plans to demolish and remove the existing pier and associated pipelines and appurtenances while simultaneously replacing it with a generally similar structure that meets relevant standards for seismic strength and is designed to better accommodate modern Navy ships. Demolition and construction are planned to occur in two phases to maintain the fueling capabilities of the existing pier while the new pier is being constructed. During the fourth year of construction (the specified activity considered under this proposed IHA), the Navy anticipates construction at two locations: the fuel pier area and at the Naval Mine and Anti-Submarine Warfare Command (NMAWC), where the Navy's Marine Mammal Program (MMP) was temporarily moved during fuel pier construction (see Figure 1–1 in the Navy's application). At the fuel pier, the Navy anticipates driving remaining concrete fender piles and driving remaining steel piles for mooring dolphins. At NMAWC, Navy anticipates extracting and driving concrete piles as needed to return the existing facility to its configuration prior to temporary placement of the MMP, which will be returned to its previous location near the fuel pier. For construction work at the fuel pier, Navy anticipates driving approximately 24 30-in steel pipe piles, 81 30 x 24-in concrete piles, and one 16-in concrete-filled fiberglass pile. Steel pipe piles would be installed to refusal using a vibratory driver and then finished using an impact hammer; concrete piles would be installed to within five feet of tip elevation via jetting before being finished with an impact hammer, and the fiberglass pile would be installed entirely using an impact hammer. At NMAWC, Navy anticipates driving 21 16-in concrete piles using an impact hammer and removing forty existing 16-in concrete piles used for the temporary MMP relocation. See Table 1–4 in the Navy's application for more detail on piles to be installed.

The majority of demolition activity of the existing pier would occur concurrently during this fourth IHA period, including the removal of approximately 458 steel, concrete, and plastic piles and 51 concrete-filled steel caissons. Removals may occur by multiple means, including vibratory removal, hydraulic pile cutter, torch cutter, dead pull, and diamond saw, as determined to be most effective. See Table 1–3 in the Navy's application for more detail on piles to be removed.

The proposed actions with the potential to incidentally harass marine mammals within the waters adjacent to NBPL are vibratory and impact pile installation and certain demolition (*i.e.*, pile removal) techniques when not occurring concurrently with pile installation. Concurrent use of multiple pile driving rigs is not planned.

Dates and Duration

The proposed activities that would be authorized by this IHA, during the fourth year of work associated with the fuel pier project, would occur for one year from the date of issuance of this proposed IHA. Under the terms of a memorandum of understanding (MOU) between the Navy and the U.S. Fish and Wildlife Service (FWS), all noise- and turbidity-producing in-water activities in designated least tern foraging habitat are to be avoided during the period when least terns are present and engaged in nesting and foraging (a window from approximately May 1 through September 15). However, it is possible that in-water work not expected to result in production of significant noise or turbidity (*e.g.*, demolition activities) could occur at any time during the period of validity of this proposed IHA. The conduct of any such work would be subject to approval from FWS under the terms of the MOU. We expect that in-water construction work would primarily occur from October through April. Pile driving would occur during normal working hours (approximately 7 a.m. to 6 p.m.), and would not occur earlier than 45 minutes after sunrise or later than 45 minutes before sunset.

Specific Geographic Region

NBPL is located on the peninsula of Point Loma near the mouth and along the northern edge of San Diego Bay (see Figures 1–1 and 1–2 in the Navy's application). San Diego Bay is a narrow, crescent-shaped natural embayment oriented northwest-southeast with an approximate length of 24 km and a total area of roughly 4,500 ha. The width of the bay ranges from 0.3 to 5.8 km, and depths range from 23 m mean lower low water (MLLW) near the tip of Ballast Point to less than 2 m at the southern end (see Figure 2–1 of the Navy's application). San Diego Bay is a heavily urbanized area with a mix of industrial, military, and recreational uses. The northern and central portions of the bay have been shaped by historic dredging to support large ship navigation. Dredging occurs as necessary to maintain constant depth within the navigation channel. Outside the navigation channel, the bay floor consists of platforms at depths that vary slightly. Sediments in northern San Diego Bay are relatively sandy as tidal currents tend to keep the finer silt and clay fractions in suspension, except in harbors and elsewhere in the lee of structures where water movement is diminished. Much of the shoreline consists of riprap and manmade structures. San Diego Bay is heavily used by commercial, recreational, and military vessels, with an average of over 80,000 vessel movements (in or out of the bay) per year (not including recreational boating within the Bay) (see Table 2–2 of the Navy's application). For more information about the specific geographic region, please see section 2.3 of the Navy's application.

Detailed Description of Activities

In order to provide context, we described the entire project in our **Federal Register** notice of proposed authorization associated with the first-year IHA (78 FR 30873; May 23, 2013). Please see that document for an overview of the entire fuel pier replacement project, or see the Navy's Environmental Assessment (2013) for more detail. Here, we provide an overview of relevant construction methods before describing only the specific project portions scheduled for completion during the third work window. Please see section 1 of the

Navy's application for full detail of construction scheduling for this period. For the fourth year of work, approximately 106 steel and concrete piles would be installed, completing in-water construction work for the new pier (with a total of approximately 518 steel and concrete piles installed). The Navy anticipates the need to request a fifth IHA related to completion of demolition work.

Methods, Pile Installation—Vibratory hammers, which can be used to either install or extract a pile, contain a system of counter-rotating eccentric weights powered by hydraulic motors and are designed in such a way that horizontal vibrations cancel out, while vertical vibrations are transmitted into the pile. The pile driving machine is lifted and positioned over the pile by means of an excavator or crane, and is fastened to the pile by a clamp and/or bolts. The vibrations produced cause liquefaction of the substrate surrounding the pile, enabling the pile to be extracted or driven into the ground using the weight of the pile plus the hammer. Impact hammers use a rising and falling piston to repeatedly strike a pile and drive it into the ground.

Steel piles are typically vibratory-driven for their initial embedment depths or to refusal and finished with an impact hammer for proofing or until the pile meets structural requirements, as necessary. Proofing involves striking a driven pile with an impact hammer to verify that it provides the required load-bearing capacity, as indicated by the number of hammer blows per foot of pile advancement. Non-steel piles are typically impact-driven for their entire embedment depth, in part because non-steel piles are often displacement piles (as opposed to pipe piles) and require some impact to allow substrate penetration. However, jetting may be used to advance displacement piles to a certain embedment depth. Pile jetting utilizes a directed and flow of pressurized water to assist in pile placement. The jetting technique liquefies the soils at the pile tip during pile placement, reducing the friction between adjacent sub-grade soil particles around the water jet. This greatly decreases the bearing capacity of the soils below the pile tip, causing the pile to descend toward its final tip elevation with much less soil resistance, largely under its own weight.

Methods, Pile Removal—There are multiple methods for pile removal. During previous demolition, piles were generally removed by cutting at the mudline, which can be accomplished in various ways. Piles are expected to be removed during this fourth-year IHA primarily using a pile cutter, which is a bladed hydraulic device that shears the pile off. The preferred method of removing the caisson elements is to cut them at the mudline and then into two sections using a diamond wire cutting saw. Existing caisson elements would be removed with a clamshell, which is a dredging bucket consisting of two similar halves that open/close at the bottom and are hinged at the top. The clamshell would be used to grasp and lift large components.

Piles may also be removed by simply dry pulling, or pulling after the pile has been loosened using a vibratory hammer or a pneumatic chipper. Jetting may be another option to loosen piles that could not be removed through the previous procedures. Pile removal is not generally expected to require the use of vibratory extraction or pneumatic chipping, and these methods are considered as contingency in the event other methods of extraction are not successful.

Construction—Construction work during the proposed fourth year of activity would include driving of steel pipe piles to complete construction of mooring dolphins and driving of concrete fender piles for the new pier and mooring dolphins. This work is expected to require a total of 53 days.

Demolition—Demolition of the old pier will continue during construction activity. Much of the demolition work will be above-water, involving removal of decking, utilities, and appurtenances, but in-water structure removal will also occur, as described above under "Methods, Pile Removal." The in-water portion of demolition work planned during the period of this proposed IHA is expected to require 156 days in total.

NMAWC—As described above, the Navy also plans to return the MMP to its permanent location near the fuel pier, requiring extraction and installation of concrete piles to return the NMAWC site to its original condition. This work is expected to require eighteen days.

Description of Work Accomplished

During the first in-water work season (2013–14), two primary activities were conducted: Relocation of the MMP and the Indicator Pile Program (IPP). During the second in-water work season (2014–15), the IPP was concluded and simultaneous construction of the new pier and demolition of the old pier begun. Production pile driving continued during the third in-water work season (2015–16).

The Navy MMP, administered by Space and Naval Warfare Systems Command Systems Center, was moved approximately three kilometers to the NMAWC (see Figures 1–1 and 1–2 of the Navy's Year 1 monitoring report). Although not subject to the MMPA, SSC's working animals were temporarily relocated so that they will not be affected by the project. Over the course of 25 in-water construction days from January 28 to March 13, 2014, the Navy removed thirty and installed 81 concrete piles (12- and 16-in). See Table 3–2 of the Navy's Year 1 monitoring report for details. Installation was accomplished via a D19–42 American Pile Driving Equipment, Inc. (APE) diesel hammer with energy capacity of 23,566–42,800 ft-lbs and fitted with a hydraulic tripping cylinder with four adjustable power settings that could be reset while driving. Pile removal was accomplished by jetting and dead pull.

The IPP was designed to validate the length of pile required and the method of installation (vibratory and impact) as well as to validate acoustic sound pressure levels of the various sizes and locations (*i.e.,* shallow versus deeper water) of installed piles. Nine steel pipe test piles were vibratory- and impact-driven over ten work days from April 28 to May 15, 2014, including two 30-in and seven 36-in piles. All piles were initially installed using an APE Variable Moment 250 VM Vibratory Hammer Extractor powered by a model 765 hydraulic power source creating a maximum driving force of 2,389 kilonewtons (269 tons). Impact pile driving equipment consisted of a single acting diesel impact hammer model D62–22 DELMAG with energy capacity of 76,899–153,799 ft-lbs and fitted with a hydraulic tripping cylinder with four adjustable power settings that could be reset while driving. One additional 36-in pile was installed in Spring 2015, under the Year 2 IHA, to conclude the IPP.

Production pile driving associated with construction of the new pier was begun in Fall 2014 and continued into Spring 2015. Both vibratory and impact driving was used, as described above, to install 238 steel pipe piles (four 18-in, 31 30-in, and 203 36-in diameter). Hammers used were the same as those described above. Demolition activity was begun in Spring 2015, and included the removal of four caissons, eighteen concrete fender piles, and a portion of concrete decking from the existing fuel pier. In total, this work consisted of one hundred days of activity from October 16, 2014, through April 29, 2015. Of these one hundred days of in-water work, eighteen days involved only impact driving, fifteen days included only vibratory driving, and 65 days where both types of driving occurred.

The remaining two days involved only demolition activities. Please see the Year 2 monitoring report for more information.

Production pile driving continued in early 2016 during three distinct construction periods from January 11 through April 30, 2016, with 161 piles installed over the course of fifty days. Because most structural steel pipe piles were installed under the Year 2 IHA, this work primarily involved placement of non-structural concrete fender piles. Both vibratory and impact driving was used, as described above, to install 132 16-in polycarbonate coated concrete fender piles and 23 24 x 30-in concrete fender piles. In addition, six 30-in steel pipe piles were installed as structural elements to support a mooring dolphin. Hammers used for the steel piles were the same as those described above. The 16-in concrete piles were driven using an APE single action diesel impact hammer model D25–32, with energy capacity of 29,484–58,245 ft-lbs and fitted with a manual power level modulator and shut off trip. The 24 x 30-in concrete piles were driven using an APE single action diesel impact hammer model D80–42, with energy capacity of 127,008–198,450 ft-lbs and fitted with a manual power level modulator and shut off trip. No demolition occurred during this period. Of the 50 days of in-water work, 45 days involved only impact driving, two days included only vibratory driving, and three days where both types of driving occurred. Please see the Year 3 monitoring report for more information. Additional work may be conducted under the existing IHA between September 15 and October 7, 2016, in which case the submitted monitoring report would be amended as necessary.

Description of Marine Mammals in the Area of the Specified Activity

There are four marine mammal species which are either resident or have known seasonal occurrence in the vicinity of San Diego Bay, including the California sea lion, harbor seal, bottlenose dolphin, and gray whale (see Figures 3–1 through 3–4 and 4–1 in the Navy's application). In addition, common dolphins (see Figure 3–4 in the Navy's application), the Pacific white-sided dolphin, Risso's dolphin, and northern elephant seals are known to occur in deeper waters in the vicinity of San Diego Bay and/or have been observed within the bay during the course of this project's monitoring. Although the latter three species of cetacean would not generally be expected to occur within the project area, the potential for changes in occurrence patterns in conjunction with recent observations leads us to believe that authorization of incidental take is warranted. Common dolphins have been documented regularly at the Navy's nearby Silver Strand Training Complex, and were observed in the project area during previous years of project activity. The Pacific white-sided dolphin has been sighted along a previously used transect on the opposite side of the Point Loma peninsula (Merkel and Associates, 2008) and there were several observations of Pacific white-sided dolphins during Year 2 monitoring. Risso's dolphin is fairly common in southern California coastal waters (*e.g.,* Campbell *et al.,* 2010), and could occur in the bay. Northern elephant seals are included based on their continuing increase in numbers along the Pacific coast (Carretta *et al.,* 2016) and the likelihood that animals that reproduce on the islands offshore of Baja California and mainland Mexico—where the population is also increasing—could move through the project area during migration, as well as the observation of a juvenile seal near the fuel pier in April 2015.

Note that common dolphins could be either short-beaked (*Delphinus delphis delphis*) or long-beaked (*D. delphis bairdii*). While it is likely that common dolphins observed in the project area would be long-beaked, as it is the most frequently stranded species in the area from San Diego Bay to the U.S.-Mexico border (Danil and St. Leger, 2011), the species distributions overlap and it is unlikely that observers would be able to differentiate them in the field. Therefore, we consider that any common dolphins observed—and any incidental take of common dolphins—could be either stock.

In addition, other species that occur in the Southern California Bight may have the potential for isolated occurrence within San Diego Bay or just offshore. In particular, a short-finned pilot whale (*Globicephala macrorhynchus*) was observed off Ballast Point, and a Steller sea lion (*Eumetopias jubatus monteriensis*) was seen in the project area during Year 2. These species are not typically observed near the project area and, unlike the previously mentioned species, we do not believe it likely that they will occur in the future. Given the unlikelihood of their exposure to sound generated from the project, these species are not considered further.

We have reviewed the Navy's detailed species descriptions, including life history information, for accuracy and completeness and refer the reader to Sections 3 and 4 of the Navy's application instead of reprinting the information here. Please also refer to NMFS' Web site (*www.nmfs.noaa.gov/pr/species/mammals*) for generalized species accounts and to the Navy's Marine Resource Assessment for the Southern California and Point Mugu Operating Areas, which provides information regarding the biology and behavior of the marine resources that may occur in those operating areas (DoN, 2008). The document is publicly available at *www.navfac.navy.mil/products_and_services/ev/products_and_services/marine_resources/marine_resource_assessments.html* (accessed July 26, 2016). In addition, we provided information for the potentially affected stocks, including details of stock-wide status, trends, and threats, in our **Federal Register** notices of proposed authorization associated with the first- and second-year IHAs (78 FR 30873; May 23, 2013 and 79 FR 53026; September 5, 2014) and refer the reader to those documents rather than reprinting the information here.

Table 1 lists the marine mammal species with expected potential for occurrence in the vicinity of NBPL during the project timeframe and summarizes key information regarding stock status and abundance. See also Figures 3–1 through 3–5 of the Navy's application for observed occurrence of marine mammals in the project area. Taxonomically, we follow Committee on Taxonomy (2016). Please see NMFS' Stock Assessment Reports (SAR), available at *www.nmfs.noaa.gov/pr/sars,* for more detailed accounts of these stocks' status and abundance. All potentially affected species are addressed in the Pacific SARs (Carretta *et al.,* 2016).

TABLE 1—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF NBPL

Species	Stock	ESA/MMPA status; Strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR [3]	Annual M/SI [4]	Relative occurrence in San Diego Bay; season of occurrence
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales) Family Eschrichtiidae						
Gray whale	Eastern North Pacific	-; N	20,990 (0.05; 20,125; 2011).	624	132	Occasional migratory visitor; winter.
Superfamily Odontoceti (toothed whales, dolphins, and porpoises) Family Delphinidae						
Bottlenose dolphin	California coastal	-; N	323 [5] (0.13; 290; 2005).	2.4	0.2	Common; year-round.
Short-beaked common dolphin.	California/Oregon/ Washington.	-; N	411,211 (0.21; 343,990; 2008).	3,440	64	Occasional; year-round (but more common in warm season).
Long-beaked common dolphin.	California	-; N	107,016 (0.42; 76,224; 2009).	610	13.8	Occasional; year-round (but more common in warm season).
Pacific white-sided dolphin.	California/Oregon/ Washington.	-; N	26,930 (0.28; 21,406; 2008).	171	17.8	Uncommon; year-round.
Risso's dolphin	California/Oregon/ Washington.	-; N	6,272 (0.3; 4,913; 2008).	39	1.6	Rare; year-round (but more common in cool season).
Order Carnivora—Superfamily Pinnipedia Family Otariidae (eared seals and sea lions)						
California sea lion	U.S	-; N	296,750 (n/a; 153,337; 2011).	9,200	389	Abundant; year-round.
Family Phocidae (earless seals)						
Harbor seal	California	-; N	30,968 (n/a; 27,348; 2012).	1,641	43	Common; year-round.
Northern elephant seal.	California breeding	-; N	179,000 (n/a; 81,368; 2010).	4,882	8.8	Rare; year-round.

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR (see footnote 3) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable. For certain stocks of pinnipeds, abundance estimates are based upon observations of animals (often pups) ashore multiplied by some correction factor derived from knowledge of the species (or similar species) life history to arrive at a best abundance estimate; therefore, there is no associated CV. In these cases, the minimum abundance may represent actual counts of all animals ashore.

[3] Potential biological removal, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size (OSP).

[4] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, subsistence hunting, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value.

[5] This value is based on photographic mark-recapture surveys conducted along the San Diego coast in 2004–05, but is considered a likely underestimate, as it does not reflect that approximately 35 percent of dolphins encountered lack identifiable dorsal fin marks (Defran and Weller, 1999). If 35 percent of all animals lack distinguishing marks, then the true population size would be closer to 450–500 animals (Carretta *et al.,* 2016).

Gray Whale

Two populations of gray whales are recognized, Eastern and Western North Pacific (ENP and WNP). The two populations have historically been considered geographically isolated from each other; however, recent data from satellite-tracked whales indicates that there is some overlap between the stocks. Two WNP whales were tracked from Russian foraging areas along the Pacific rim to Baja California (Mate *et al.,* 2011), and, in one case where the satellite tag remained attached to the whale for a longer period, a WNP whale was tracked from Russia to Mexico and back again (IWC, 2012). Between 22–24 WNP whales are known to have occurred in the eastern Pacific through comparisons of ENP and WNP photo-identification catalogs (IWC, 2012; Weller *et al.,* 2011; Burdin *et al.,* 2011), and WNP animals comprised 8.1 percent of gray whales identified during a recent field season off of Vancouver Island (Weller *et al.,* 2012). In addition, two genetic matches of WNP whales have been recorded off of Santa Barbara, CA (Lang *et al.,* 2011). More recently, Urban *et al.* (2013) compared catalogs of photo-identified individuals from Mexico with photographs of whales off Russia and reported a total of 21 matches. Therefore, a portion of the WNP population is assumed to migrate, at least in some years, to the eastern Pacific during the winter breeding season.

However, only ENP whales are expected to occur in the project area. The likelihood of any gray whale being exposed to project sound to the degree considered in this document is already low, as it would require a migrating whale to linger for an extended period of time, or for multiple migrating whales to linger for shorter periods of time. While such an occurrence is not unknown, it is uncommon. Further, of the approximately 20,000 gray whales migrating through the Southern California Bight, it is extremely unlikely that one found in San Diego Bay would be one of the approximately twenty WNP whales that have been documented in the eastern Pacific (less than one percent probability). The likelihood that a WNP whale would be exposed to elevated levels of sound from the specified activities is insignificant and discountable and WNP whales are not considered further in this document.

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

We provided discussion of the potential effects of the specified activity on marine mammals and their habitat in our **Federal Register** notices of proposed authorization associated with the first- and second-year IHAs (78 FR 30873; May 23, 2013 and 79 FR 53026; September 5, 2014). The specified activity associated with this proposed IHA is substantially similar to those considered for the first- and second-year IHAs and the potential effects of the specified activity are the same as those identified in those documents. Therefore, we do not reprint the information here but refer the reader to those documents.

In the aforementioned **Federal Register** notices, we also provided general background information on sound and marine mammal hearing and a description of sound sources and ambient sound and refer the reader to those documents. However, because certain terms are used frequently in this document, we provide brief definitions of relevant acoustic terminology below:

- Sound pressure level (SPL): Sound pressure is the force per unit area, usually expressed in microPascals (μPa), where one Pascal equals one Newton exerted over an area of one square meter. The SPL is expressed in decibels (dB) as twenty times the logarithm to the base ten of the ratio between the pressure exerted by the sound to a referenced sound pressure. SPL is the quantity that is directly measured by a sound level meter. For underwater sound, SPL in dB is referenced to one microPascal (re 1 μPa), unless otherwise stated. For airborne sound, SPL in dB is referenced to 20 microPascals (re 20 μPa), unless otherwise stated.
- Frequency: Frequency is expressed in terms of oscillations, or cycles, per second. Cycles per second are commonly referred to as hertz (Hz). Typical human hearing ranges from 20 Hz to 20 kilohertz (kHz).
- Peak sound pressure: The instantaneous maximum of the absolute positive or negative pressure over the frequency range from 20 Hz to 20 kHz and presented in dB.
- Root mean square (rms) SPL: For impact pile driving, overall dB rms levels are characterized by integrating sound for each waveform across ninety percent of the acoustic energy in each wave and averaging all waves in the pile driving event. This value is referred to as the rms 90%. With this method, the time averaging per pulse varies.
- Sound Exposure Level (SEL): A measure of energy, specifically the dB level of the time integral of the squared-instantaneous sound pressure, normalized to a one second period. It is an useful metric for assessing cumulative exposure because it enables sounds of differing duration, to be compared in terms of total energy. The accumulated SEL (SEL_{cum}) is used to describe the SEL from multiple events (*e.g.,* many pile strikes). This can be calculated directly as a logarithmic sum of the individual single-strike SELs for the pile strikes that were used to install the pile.
- Level Z weighted (unweighted), equivalent (LZ_{eq}): LZ_{eq} is a value recorded by the SLM that represents SEL SPL over a specified time period or interval. The LZeq is most typically referred to in one-second intervals or over an entire event.
- Level Z weighted (unweighted), fast (LZF_{max}): LZF_{max} is a value recorded by the SLM that represents the maximum rms value recorded for any 125 millisecond time frame during each individual recording.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

The mitigation strategies described below largely follow those required and successfully implemented under the first three IHAs associated with this project. For this proposed IHA, data from acoustic monitoring conducted during the first three years of work was used to estimate zones of influence (ZOIs; see "Estimated Take by Incidental Harassment"); these values were used to develop mitigation measures for pile driving activities at NBPL. The ZOIs effectively represent the mitigation zone that would be established around each pile to minimize Level A harassment to marine mammals, while providing estimates of the areas within which Level B harassment might occur. In addition, the Navy has defined buffers to the estimated Level A harassment zones to further reduce the potential for Level A harassment. In addition to the measures described later in this section, the Navy would conduct briefings between construction supervisors and crews, marine mammal monitoring team, acoustic monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

Monitoring and Shutdown for Pile Driving

The following measures would apply to the Navy's mitigation through shutdown and disturbance zones:

Shutdown Zone—For all pile driving and removal activities, the Navy will establish a shutdown zone intended to contain the area in which SPLs equal or exceed NMFS' historical 180/190 dB rms acoustic injury criteria. The purpose of a shutdown zone is to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area), thus preventing injury of marine mammals (serious injury or death are unlikely outcomes even in the absence of mitigation measures). Estimated radial distances to the relevant thresholds are shown in Table 5. For certain activities, the shutdown zone would not exist because source levels are lower than the threshold, or the source levels indicate that the radial distance to the threshold would be less than 10 m. However, a minimum shutdown zone of 10 m will be established during all pile driving and removal activities, regardless of the estimated zone. In addition the Navy proposes to effect a buffered shutdown zone that is intended to significantly reduce the potential for Level A harassment given that, in particular, California sea lions are quite abundant in the project area and bottlenose

dolphins may surface unpredictably and move erratically in an area with a large amount of construction equipment. The Navy considered typical swim speeds (Godfrey, 1985; Lockyer and Morris, 1987; Fish, 1997; Fish *et al.,* 2003; Rohr *et al.,* 2002; Noren *et al.,* 2006) and past field experience (*e.g.,* typical elapsed time from observation of an animal to shutdown of equipment) in initially defining these buffered zones, and then evaluated the practicality and effectiveness of the zones during the Years 2–3 construction periods. The Navy will add a buffer of 75 m and 150 m to the estimated Level A harassment zones for impact driving of steel piles for pinnipeds and cetaceans, respectively, (incerasing the effective zones to 150 m and 450 m radius. These zones are also shown in Table 5. These precautionary measures are intended to prevent the already unlikely possibility of physical interaction with construction equipment and to establish a precautionary minimum zone with regard to acoustic effects.

Disturbance Zone—Disturbance zones are the areas in which SPLs equal or exceed 160 and 120 dB rms (for impulse and continuous sound, respectively). Disturbance zones provide utility for monitoring conducted for mitigation purposes (*i.e.,* shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of disturbance zones enables observers to be aware of and communicate the presence of marine mammals in the project area but outside the shutdown zone and thus prepare for potential shutdowns of activity. However, the primary purpose of disturbance zone monitoring is for documenting incidents of Level B harassment; disturbance zone monitoring is discussed in greater detail later (see "Proposed Monitoring and Reporting"). Nominal radial distances for disturbance zones are shown in Table 5.

In order to document observed incidents of harassment, monitors record all marine mammal observations, regardless of location. The observer's location, as well as the location of the pile being driven, is known from a GPS. The location of the animal is estimated as a distance from the observer, which is then compared to the location from the pile. If acoustic monitoring is being conducted for that pile, a received SPL may be estimated, or the received level may be estimated on the basis of past or subsequent acoustic monitoring. It may then be determined whether the animal was exposed to sound levels constituting incidental harassment in post-processing of observational and acoustic data, and a precise accounting of observed incidences of harassment created. Therefore, although the predicted distances to behavioral harassment thresholds are useful for estimating incidental harassment for purposes of authorizing levels of incidental take, actual take may be determined in part through the use of empirical data.

Acoustic measurements will continue during the fourth year of project activity and zones would be adjusted as indicated by empirical data. Please see the Navy's Acoustic and Marine Species Monitoring Plan (Monitoring Plan; available at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm*) for full details.

Monitoring Protocols—Monitoring would be conducted before, during, and after pile driving activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven. Observations made outside the shutdown zone will not result in shutdown; that pile segment would be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities would be halted. Monitoring will take place from fifteen minutes prior to initiation through thirty minutes post-completion of pile driving activities. Pile driving activities include the time to remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes. Please see the Monitoring Plan for full details of the monitoring protocols.

The following additional measures apply to visual monitoring:

(1) Monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable (as defined in the Monitoring Plan) to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Qualified observers are trained biologists, with the following minimum qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Advanced education in biological science or related field (undergraduate degree or higher is required);
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

(2) Prior to the start of pile driving activity, the shutdown zone will be monitored for fifteen minutes to ensure that it is clear of marine mammals. Pile driving will only commence once observers have declared the shutdown zone clear of marine mammals; animals will be allowed to remain in the shutdown zone (*i.e.,* must leave of their own volition) and their behavior will be monitored and documented. The shutdown zone may only be declared clear, and pile driving started, when the entire shutdown zone is visible (*i.e.,* when not obscured by dark, rain, fog, etc.). In addition, if such conditions should arise during impact pile driving that is already underway, the activity would be halted.

(3) If a marine mammal approaches or enters the shutdown zone during the course of pile driving operations, activity will be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or fifteen minutes have passed without re-detection of the animal. Monitoring will be conducted throughout the time required to drive a pile and for thirty minutes following the conclusion of pile driving.

Sound Attenuation Devices

The use of bubble curtains to reduce underwater sound from impact pile driving was considered prior to the start of the project but was determined to not be practicable. Use of a bubble curtain in a channel with substantial current

may not be effective, as unconfined bubbles are likely to be swept away and confined curtain systems may be difficult to deploy effectively in high currents. Data gathered during monitoring of construction on the San Francisco-Oakland Bay Bridge indicated that no reduction in the overall linear sound level resulted from use of a bubble curtain in deep water with relatively strong current, and the distance to the 190 dB zone was considered to be the same with and without the bubble curtain (Illingworth & Rodkin, 2001). During project monitoring for pile driving associated with the Richmond-San Rafael Bridge, also in San Francisco Bay, it was observed that performance in moderate current was significantly reduced (Oestman *et al.*, 2009). Lucke *et al.* (2011) also note that the effectiveness of most currently used curtain designs may be compromised in stronger currents and greater water depths. We believe that conditions (relatively deep water and strong tidal currents of up to 3 kn) at the project site would disperse the bubbles and compromise the effectiveness of sound attenuation.

Timing Restrictions

In-order to avoid impacts to least tern populations when they are most likely to be foraging and nesting, in-water work will be concentrated from October 1–April 1 or, depending on circumstances, to April 30. However, this limitation is in accordance with agreements between the Navy and FWS, and is not a requirement of this proposed IHA. All in-water construction activities would occur only from 45 minutes after sunrise to 45 minutes before sunset.

Soft Start

The use of a soft start procedure is believed to provide additional protection to marine mammals by warning or providing a chance to leave the area prior to the hammer operating at full capacity, and typically involves a requirement to initiate sound from the hammer at reduced energy followed by a waiting period. This procedure is repeated two additional times. It is difficult to specify the reduction in energy for any given hammer because of variation across drivers and, for impact hammers, the actual number of strikes at reduced energy will vary because operating the hammer at less than full power results in "bouncing" of the hammer as it strikes the pile, resulting in multiple "strikes." The project will utilize soft start techniques for impact pile driving. We require an initial set of three strikes from the impact hammer at reduced energy, followed by a thirty-second waiting period, then two subsequent three strike sets. Soft start will be required at the beginning of each day's impact pile driving work and at any time following a cessation of impact pile driving of thirty minutes or longer; the requirement to implement soft start for impact driving is independent of whether vibratory driving has occurred within the prior thirty minutes.

We have carefully evaluated the Navy's proposed mitigation measures and considered their effectiveness in past implementation to preliminarily determine whether they are likely to effect the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals, (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation.

Any mitigation measure(s) we prescribe should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

(2) A reduction in the number (total number or number at biologically important time or location) of individual marine mammals exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(3) A reduction in the number (total number or number at biologically important time or location) of times any individual marine mammal would be exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(4) A reduction in the intensity of exposure to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing the severity of behavioral harassment only).

(5) Avoidance or minimization of adverse effects to marine mammal habitat, paying particular attention to the prey base, blockage or limitation of passage to or from biologically important areas, permanent destruction of habitat, or temporary disturbance of habitat during a biologically important time.

(6) For monitoring directly related to mitigation, an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the Navy's proposed measures, as well as any other potential measures that may be relevant to the specified activity, we have preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for incidental take authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Any monitoring requirement we prescribe should improve our understanding of one or more of the following:

- Occurrence of marine mammal species in action area (*e.g.*, presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) Affected species (*e.g.*, life history, dive patterns); (3) Co-occurrence of marine mammal species with the action; or (4) Biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas).
- Individual responses to acute stressors, or impacts of chronic exposures (behavioral or physiological).
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of an individual; or (2) Population, species, or stock.
- Effects on marine mammal habitat and resultant impacts to marine mammals.

• Mitigation and monitoring effectiveness.

Please see the Monitoring Plan (available at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm*) for full details of the requirements for monitoring and reporting. Notional monitoring locations (for biological and acoustic monitoring) are shown in Figures 3–1 and 3–2 of the Plan. The purpose of this Plan is to provide protocols for acoustic and marine mammal monitoring implemented during pile driving and removal activities. We have preliminarily determined this monitoring plan, which is summarized here and which largely follows the monitoring strategies required and successfully implemented under the previous IHAs, to be sufficient to meet the MMPA's monitoring and reporting requirements. The previous monitoring plan was modified to integrate adaptive changes to the monitoring methodologies as well as updates to the scheduled construction activities. Monitoring objectives are as follows:

• Monitor in-water construction activities, including the implementation of in-situ acoustic monitoring efforts to continue to measure SPLs from in-water construction and demolition activities not previously monitored or validated during the previous IHAs. This would include collection of acoustic data for activities and pile types for which sufficient data has not previously been collected, including for diamond saw cutting of caissons during fuel pier demolition. The Navy also plans to collect acoustic data for removal of 30-in steel piles via either vibratory extraction or torch cutting.

• Monitor marine mammal occurrence and behavior during in-water construction activities to minimize marine mammal impacts and effectively document marine mammals occurring within ZOI boundaries.

Collection of ambient underwater sound measurements in the absence of project activities has been concluded, as a rigorous baseline dataset for the project area has been developed.

Acoustic Measurements

The primary purpose of acoustic monitoring is to empirically verify modeled injury and behavioral disturbance zones (defined at radial distances to NMFS-specified thresholds; see "Estimated Take by Incidental Harassment" below). For non-pulsed sound, distances will continue to be evaluated for attenuation to the point at which sound becomes indistinguishable from background levels. Empirical acoustic monitoring data will be used to document transmission loss values determined from past measurements and to examine site-specific differences in SPL and affected ZOIs on an as needed basis.

Should monitoring results indicate it is appropriate to do so, marine mammal mitigation zones may be revised as necessary to encompass actual ZOIs. Acoustic monitoring will be conducted as specified in the approved Monitoring Plan. Please see Table 2–2 of the Plan for a list of equipment to be used during acoustic monitoring. Monitoring locations will be determined based on results of previous acoustic monitoring effort and the best professional judgment of acoustic technicians.

No acoustic data will be collected for 30-in steel piles as sufficient data has been collected for 36-in steel piles during previous years. For other activities, such as fender pile driving and demolition, the Navy will continue to collect in situ acoustic data to validate source levels and ZOIs. Environmental data would be collected including but not limited to: Wind speed and direction, air temperature, humidity, surface water temperature, water depth, wave height, weather conditions and other factors that could contribute to influencing the airborne and underwater sound levels (*e.g.*, aircraft, boats). Full details of acoustic monitoring requirements may be found in section 4.2 of the Navy's Monitoring Plan.

Visual Marine Mammal Observations

The Navy will collect sighting data and behavioral responses to construction for marine mammal species observed in the region of activity during the period of activity. All observers will be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. The Navy will monitor the shutdown zone and disturbance zone before, during, and after pile driving as described under "Proposed Mitigation" and in the Monitoring Plan, with observers located at the best practicable vantage points. Notional monitoring locations are shown in Figures 3–1 and 3–2 of the Navy's Plan. Please see that plan, available at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm,* for full details of the required marine mammal monitoring. Section 3.2 of the Plan and section 13 of the Navy's application offer more detail regarding monitoring protocols. Based on our requirements, the Navy would implement the following procedures for pile driving:

• MMOs would be located at the best vantage point(s) in order to properly see the entire shutdown zone and as much of the disturbance zone as possible.

• During all observation periods, observers will use binoculars and the naked eye to search continuously for marine mammals.

• If the shutdown zones are obscured by fog or poor lighting conditions, pile driving at that location will not be initiated until that zone is visible. Should such conditions arise while impact driving is underway, the activity would be halted.

• The shutdown and disturbance zones around the pile will be monitored for the presence of marine mammals before, during, and after any pile driving or removal activity.

One MMO will be placed in the most effective position near the active construction/demolition platform in order to observe the respective shutdown zones for vibratory and impact pile driving or for applicable demolition activities. Monitoring would be primarily dedicated to observing the shutdown zone; however, MMOs would record all marine mammal sightings beyond these distances provided it did not interfere with their effectiveness at carrying out the shutdown procedures. Additional land, pier, or vessel-based MMOs will be positioned to monitor the shutdown zones and the buffer zones, as notionally indicated in Figures 3–1 and 3–2 of the Navy's application.

During driving of steel piles, at least four additional MMOs (five total) will be deployed. Three of the five MMOs will be positioned in various pier-based locations around the new fuel pier to monitor the ZOIs. Two of these will be stationed at the north and south ends of the second deck of the new pier, and one MMO will be stationed on a second story balcony of a building on the existing pier. This building is scheduled to be demolished as part of the project. When the building is removed, a suitable secondary location with similar visibility will be used as an observation location. One MMO will be positioned in a boat at or near floating docks associated, and will focus on the furthest extent of the 450-m cetacean shutdown ZOI. The fifth MMO will be positioned on a second-story balcony of a Navy building on Ballast Point at the entrance to San Diego Bay, will focus on the furthest extent of the Level B ZOIs, and will monitor for marine mammals as they enter or exit San Diego Bay.

One additional team member—the "Command" position—will remain on the construction barge for the duration of monitoring efforts, and will log pile driving start and stop times. This

position will act as a secondary MMO during monitoring efforts, but will not log marine species observations as part of their normal duties. They will use either verbal or visual communication procedures to stop active construction if an animal enters the shutdown zones.

During driving of 24 x 30-in concrete fender piles, two MMOs and the additional "Command" team member will be on duty. The two MMOs would be stationed on the second deck of the new fuel pier in the most appropriate locations. During driving of the 16-in poly-concrete pile, one MMO and the "Command" position would be on duty. One MMO would be on duty during demolition using the diamond saw. During activity at the NMAWC site, at least two MMOs will be on duty and will be located at the most appropriate positions.

The MMOs will record all visible marine mammal sightings. Confirmed takes will be registered once the sightings data has been overlaid with the isopleths identified in Table 5 and visualized in Figures 6–2, 6–3, and 6–4 of the Navy's application, or based on refined acoustic data, if amendments to the ZOIs are needed. Acousticians on duty may be noting SPLs in real-time, but, to avoid biasing the observations, will not communicate that information directly to the MMOs. These platforms may move closer to, or farther from, the source depending on whether received SPLs are less than or greater than the regulatory threshold values. All MMOs will be in radio communication with each other so that the MMOs will know when to anticipate incoming marine mammal species and when they are tracking the same animals observed elsewhere.

If any species for which take is not authorized is observed by a MMO during applicable construction or demolition activities, all construction will be stopped immediately. If a boat is available, MMOs will follow the animal(s) at a minimum distance of 100 m until the animal has left the Level B ZOI. Pile driving will commence if the animal has not been seen inside the Level B ZOI for at least one hour of observation. If the animal is resighted again, pile driving will be stopped and a boat-based MMO (if available) will follow the animal until it has left the Level B ZOI.

Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. Monitoring biologists will use their best professional judgment throughout implementation and seek improvements to these methods when deemed appropriate. Any modifications to protocol will be coordinated between NMFS and the Navy.

Data Collection

We require that observers use approved data forms. Among other pieces of information, the Navy will record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. In addition, the Navy will attempt to distinguish between the number of individual animals taken and the number of incidents of take. We require that, at a minimum, the following information be collected on the sighting forms:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.,* percent cover, visibility);
- Water conditions (*e.g.,* sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity, and if possible, the correlation to measured SPLs;
- Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- Description of implementation of mitigation measures (*e.g.,* shutdown or delay);
- Locations of all marine mammal observations; and
- Other human activity in the area.

In addition, photographs would be taken of any gray whales observed. These photographs would be submitted to NMFS' West Coast Regional Office for comparison with photo-identification catalogs to determine whether the whale is a member of the WNP population.

Reporting

A draft report would be submitted to NMFS within 45 calendar days of the completion of marine mammal monitoring, or sixty days prior to the issuance of any subsequent IHA for this project, whichever comes first. The report will include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days, and will also provide descriptions of any behavioral responses to construction activities by marine mammals and a complete description of all mitigation shutdowns and the results of those actions. A final report would be prepared and submitted within thirty days following resolution of comments on the draft report. Required contents of the monitoring reports are described in more detail in the Navy's Acoustic and Marine Species Monitoring Plan.

Monitoring Results From Previously Authorized Activities

The Navy complied with the mitigation and monitoring required under the previous authorizations for this project. Acoustic and marine mammal monitoring was implemented as required, with marine mammal monitoring occurring before, during, and after each pile driving event. During the course of Year 3 activities, the Navy did not exceed the take levels authorized under the IHA, and no animals were observed to occur within defined Level A harassment zones (please see the Navy's monitoring report for more details and below for further discussion).

The general objectives of the monitoring plan were similar to those described above for the Year 4 monitoring plan. For acoustic monitoring, the primary goal was to continue to collect in situ data towards validation of the acoustic ZOIs defined based on previous data collection efforts and using the transmission loss modeling effort conducted prior to the start of the project, and to continue collection of data on background noise conditions in San Diego Bay.

Acoustic Monitoring Results—For a full description of acoustic monitoring methodology, please see section 2.3 of the Navy's monitoring report, including Figure 2–3 for representative monitoring locations. Results from Years 1–3 are displayed in Table 2. Please see our notices of proposed IHAs for the Years 2 and 3 IHAs (79 FR 53026; September 5, 2014 and 80 FR 53115; September 2, 2015) or the Navy's Year 1 and 2 monitoring reports for more detailed description of monitoring accomplished during the first two years of the project.

For acoustic monitoring associated with impact pile driving, continuous hydroacoustic monitoring systems were positioned at source (10 m from the pile) and opportunistically at predicted 160-dB Level B ZOIs. The far-field data collections were conducted at multiple locations during impact driving of 16-in concrete-filled poly piles and 24 x 30-in concrete fender piles, *i.e.,* approximately 20 to 550 m from source. Hydrophones were deployed from the dock, barge, or moored vessel at half the water depth. The SPLs for driving of 30-in steel pipe piles were measured intermittently and archived (but not reported) because associated SPLs for

the size, type, and location of the piles were previously validated. Source SPLs were recorded and analyzed for a minimum of five piles for each of the concrete pile types. Additional measurements were archived.

SPLs of pile driving and demolition activities conducted during Year 2 fell within expected levels but varied spatially relative to the existing fuel pier structure and maximum source levels for individual piles (Table 4). For both vibratory and impact pile driving methods, results from the IPP (Year 1) and 2014/2015 production pile driving (Year 2) showed that transmission loss for piles driven in shallow water inside of the existing fuel pier was greater than piles driven in deep water outside of the existing pier. Differences in depth, sediment type, and existing in-water pier/wharf structures likely accounted for variations in transmission loss and measured differences in SPLs recorded at the shutdown and far-field locations for shallow versus deep piles of the same type and size. SPLs documented during vibratory and impact pile driving of shallow and deep steel pipe piles of the same size displayed notable differences in SPLs at shutdown range and to a lesser extent at source.

Measurements of impact driving of concrete piles conducted during Year 3 produced greater than expected SPLs at source. Differences in the subsurface conditions may account for the discrepancy, as a hardened layer is found at approximately 20–40 m below the mudline. SPLs documented during driving of 16-in piles generally displayed relatively low sound source levels during initial driving then appreciable increases observed once the piles interacted with this layer. Measurements from driving of the square concrete piles showed greatest sound source levels during initial impact pile driving which then decreased once the piles transitioned through the hardened layer. While source SPLs were observed to be greater than expected for both pile types, attenuation was also greater. Despite greater than expected source levels, the measured isopleth distances were similar to modeled predictions. Far-field impact pile driving results varied substantially between piles and locations for the various pile sizes, types, and locations. Both pile types were driven adjacent to the new fuel pier and source SPLs were subject to a wide variety of boundary conditions from recently driven piles and associated pier infrastructure. Further detail and discussion is provided in the Navy's report.

TABLE 2—ACOUSTIC MONITORING RESULTS

Location	Activity	Pile type	Number of piles measured	Average underwater SPL at 10 m (dB rms)	Average airborne SPL at 15 m (LZF_{max})	Measured distances to relevant zones (dB rms/dB unweighted) (m) [1]					
						120	160	180	190	90 [4]	100 [4]
NMAWC	Impact	12- and 16-in concrete.	58	182	108	n/a	126	13	<10	728	105
Fuel Pier (Year 1)	Vibratory	30- and 36-in steel pipe.	9	167	113	[2] 3,000	n/a	<10	<10	233	71
	Impact	36-in steel pipe	7	200		n/a	[3] 2,500	[3] 450	[3] 75		
Fuel Pier (Year 2) [6]	Vibratory	30-in steel pipe	2	165	107						
	Impact	30-in steel pipe	2	196							
	Vibratory	36-in steel pipe	31	178		2,500	n/a	<10	<10	182	78
	Impact	36-in steel pipe	31	204		n/a	2,000	350	75		
Hydraulic cutting	24-in concrete	4	154								
	Diamond saw cutting.	72-in caisson	4	[5] 143							
Fuel Pier (Year 3) [7]	Impact	16-in poly-concrete	6	190	104–110		270	50	20	149	42
	Impact	24 x 30-in concrete	3	189	110–113		470				

[1] Site-specific measured transmission loss values (both underwater and airborne) were used to calculate zone distances. See monitoring report for more detail.
[2] The 120-dB disturbance zone was initially modeled to be 6,470 m; however, ambient sound in the vicinity of the project site was measured at approximately 128 dB rms (see below). This value was used in conjunction with a site-specific propagation model to arrive at a predicted distance of 3,000 m at which sound should attenuate to background levels. This was supported by collection of measured dB rms values for vibratory pile driving during the IPP, as signal could not be distinguished from background at similar distance.
[3] These values are for outside piles. Measured distances to the 160/180/190 dB ZOIs for inside piles were 2,000/100/40 m. Zones calculated on the basis of SPLs from 36-in piles.
[4] Distances based on impact driving.
[5] Value measured at 15 m from source.
[6] Year 2 values are maximum values rather than average. We use these in defining conservative ZOIs.
[7] Underwater source level measurements are as reported from Loggerhead DSG acoustic data recorders and described in section 3.2.2 and Appendix E of the report.

Ambient data collection was conducted in a manner consistent with NMFS' 2012 guidance for measurement of background sound. Ambient underwater and airborne sound level recordings were collected for three eight-hour days in December 2015, and April and May 2016. Ambient sound level recordings were collected in the absence of construction activities, and during typical construction time periods (7 a.m. to 6 p.m.), at locations that were between 400 and 750 m from each site. Sites were chosen to minimize boat traffic effects that might impact results. Data recorded during December 2015 and on April 5, 2016, were determined to be outliers due to anthropogenic corruption. The resulting median ambient SPL was 130.5 dB rms, similar to the value of approximately 128 dB rms resulting from previous measurement efforts.

Marine Mammal Monitoring Results—Marine mammal monitoring was conducted as required under the IHA and as described in the Year 3 monitoring plan and in our **Federal Register** notice of proposed authorization associated with the Year 3 IHA. For a full description of monitoring methodology, please see section 2.4 of the Navy's monitoring report, including Figures 2–1 and 2–2 for representative monitoring locations and Figures 2–4, 2–5, and 2–6 for monitoring zones. Monitoring protocols were managed adaptively during the course of the third-year IHA. Multiple shutdowns were implemented due to marine mammals being observed within buffered shutdown zones, but no animals were observed within actual predicted Level A harassment zones.

Monitoring results are presented in Table 3. The Navy recorded all observations of marine mammals, including pre- and post-construction

monitoring efforts. Animals observed during these periods or that were determined to be outside relevant ZOIs were not considered to represent incidents of take. Please see Figures 3–13, 3–19, and 3–24 for locations of observations and incidents of take relative to the project sites. Take authorization for the second-year authorization was informed by an assumption that 115 days of in-water construction would occur, whereas only fifty total days actually occurred. However, the actual observed rates per day were in all cases lower than what was assumed. Therefore, we expect that the Navy would not have exceeded the take allowances even if the full 115 days had been reached. In addition to the results shown in Table 3, the Navy observed two unidentified pinnipeds, which were likely California sea lions. These were not within an active Level B harassment zone.

There were considerably fewer individuals and sightings during the Year 3 IHA when compared to the same months during the Year 2 IHA, and only three species were observed. This may be due to environmental fluctuations as part of the on-going El Niño event. Water temperatures during Year 3 were cooler than during the same months during Year 2. Although the temperatures were still higher than the average water temperatures for the region prior to the current El Niño event, it shows that the event may have been dissipating. In addition, California sea lion strandings decreased. No evidently significant behavioral changes were reported.

There was one sighting of a dead California sea lion in the vicinity of the project. The dead animal was evaluated and deemed as having died as a result of factors unrelated to the project, likely due to the unusual mortality event currently ongoing in southern California waters. The observation was appropriately reported in accordance with the IHA and per protocols agreed-upon with NMFS' regional stranding coordinator.

TABLE 3—MARINE MAMMAL MONITORING RESULTS

Species	Total sightings	Total individuals	Observed incidents of Level B take	Extrapolated incidents of Level B take [1]	Total estimated Level B take
California sea lion	331	411	97	96	193
Harbor seal	24	24	9	7	16
Bottlenose dolphin	13	25	2	3	5

[1] Assumed density and unmonitored area of assumed Level B ZOI used with actual pile driving time to generate assumed take for unmonitored areas.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as: ". . . any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]."

All anticipated takes would be by Level B harassment resulting from vibratory and impact pile driving or demolition and involving temporary changes in behavior. The proposed mitigation and monitoring measures (*i.e.,* buffered shutdown zones) are expected to minimize the possibility of Level A harassment such that we believe it is unlikely. We do not expect that injurious or lethal takes would occur even in the absence of the planned mitigation and monitoring measures.

Given the many uncertainties in predicting the quantity and types of impacts of sound on marine mammals, it is common practice to estimate how many animals are likely to be present within a particular distance of a given activity, or exposed to a particular level of sound. In practice, depending on the amount of information available to characterize daily and seasonal movement and distribution of affected marine mammals, it can be difficult to distinguish between the number of individuals harassed and the instances of harassment and, when duration of the activity is considered, it can result in a take estimate that overestimates the number of individuals harassed. In particular, for stationary activities, it is more likely that some smaller number of individuals may accrue a number of incidences of harassment per individual than for each incidence to accrue to a new individual, especially if those individuals display some degree of residency or site fidelity and the impetus to use the site (*e.g.,* because of foraging opportunities) is stronger than the deterrence presented by the harassing activity.

The project area is not believed to be particularly important habitat for marine mammals, nor is it considered an area frequented by marine mammals (with the exception of California sea lions, which are attracted to nearby haul-out opportunities). Sightings of other species are relatively rare. Therefore, behavioral disturbances that could result from anthropogenic sound associated with these activities are expected to affect only a relatively small number of individual marine mammals, although those effects could be recurring over the life of the project if the same individuals remain in the project vicinity.

The Navy has requested authorization for the potential taking of small numbers of California sea lions, harbor seals, bottlenose dolphins, common dolphins, Pacific white-sided dolphins, Risso's dolphins, northern elephant seals, and gray whales in San Diego Bay and nearby waters that may result from pile driving during construction activities associated with the fuel pier replacement project described previously in this document. In order to estimate the potential incidents of take that may occur incidental to the specified activity, we typically first estimate the extent of the sound field that may be produced by the activity and then consider in combination with information about marine mammal density or abundance in the project area. In this case, we have acoustic data from project monitoring that provides empirical information regarding the sound fields likely produced by project activities. We first provide information on applicable sound thresholds for determining effects to marine mammals before describing the measured sound fields, the available marine mammal density or abundance information, and the method of estimating potential incidents of take.

Sound Thresholds

We have historically used generic sound exposure thresholds (see Table 4) to determine when an activity that produces sound might result in impacts to a marine mammal such that a take by harassment might occur. These thresholds should be considered guidelines for estimating when harassment may occur (*i.e.,* when an animal is exposed to levels equal to or exceeding the relevant criterion) in specific contexts; however, useful contextual information that may inform our assessment of effects is typically lacking and we consider these thresholds as step functions. However, NOAA is currently developing new guidance for acoustic injury (equating to Level A harassment under the MMPA); for more information on that process, please visit *www.nmfs.noaa.gov/pr/acoustics/guidelines.htm.*

TABLE 4—CURRENT ACOUSTIC EXPOSURE CRITERIA

Criterion	Definition	Threshold
Level A harassment (underwater) ...	Injury (PTS—any level above that which is known to cause TTS).	180 dB (cetaceans)/190 dB (pinnipeds) (rms).
Level B harassment (underwater) ...	Behavioral disruption	160 dB (impulsive source)/120 dB (continuous source) (rms).
Level B harassment (airborne)	Behavioral disruption	90 dB (harbor seals)/100 dB (other pinnipeds) (unweighted).

Distance to Sound Thresholds

Background information on underwater sound propagation and the calculation of range to relevant thresholds was provided in our **Federal Register** notice of proposed authorization associated with the first-year IHA (78 FR 30873; May 23, 2013). For the first-year IHA, the Navy estimated sound fields using a site-specific model for transmission loss (TL) from pile driving at a central point at the project site in combination with proxy source levels (as described in the aforementioned **Federal Register** notice). The model is based on historical temperature-salinity data and location-dependent bathymetry. In the model, TL is the same for different sound source levels and is applied to each of the different activities to determine the point at which the applicable thresholds are reached as a function of distance from the source. The model's predictions result in a slightly lower average rate of TL than practical spreading, and hence are conservative. The model has been further validated using acoustic monitoring data collected during the first three IHAs (see Figure 6–1 of the Navy's application). For activities conducted at the NMAWC site, practical spreading loss (15 log[distance/10]) is assumed.

Impact and vibratory driving of steel pipe piles, impact driving of concrete and concrete-filled fiberglass piles, and demolition using different techniques (including diamond saw cutting and potentially vibratory removal) is planned for the next phase of work. Acoustic monitoring results that inform both the take estimates as well as the mitigation monitoring zones were reported in Table 2. Here, we present the calculated distances for predicted Level A and Level B ZOIs (Table 5). In some cases, the predicted zones have been modified for purposes of mitigation and/or monitoring implementation by adding buffers or by retaining a more conservative zone size based on prior assumptions. In all cases, proposed mitigation and/or monitoring zones are either equivalent to or larger than those indicated by relevant in situ data collection. See also Figures 6–2, 6–3, and 6–4 of the Navy's application for visual representation of the anticipated sound fields and their interaction with local topography.

Measured source levels for impact and vibratory driving of 30-in steel piles were 196 dB rms and 165 dB rms, respectively, but were based on only two measured piles. Here we use measured values for 36-in steel piles (204 dB rms and 174 dB rms) as conservative proxies. Background sound has been determined to be approximately 128 dB rms, and the distance at which continuous sound produced by vibratory driving would attenuate to background levels has been determined to be approximately 3,000 m. Although Year 2 measurements indicate that such attenuation may occur closer to 2,500 m, we conservatively retain the larger distance for estimating exposures. We conservatively use the vibratory pile installation value as proxy for vibratory pile removal, if it occurs.

For the two types of concrete fender piles, measured values from Year 3 acoustic monitoring are louder than might be expected from other available literature. We had previously assumed values of 176 dB rms and 173 dB rms for impact driving of 24 x 30-in concrete piles and 16-in concrete piles, respectively (Caltrans, 2012), but the Navy's acoustic monitoring program showed that these proxies were too low (see Table 3–2 and Appendix E of the Navy's monitoring report). The Navy proposed to conservatively use average maximum rms SPLs for these piles (see Table 6–4 of the Navy's application), *i.e.,* 192 dB rms and 194 dB rms, respectively. However, as discussed previously acoustic monitoring results showed measured isopleth distances roughly comparable to those previously predicted. We use those values (Table 5) for exposure calculations here. Demolition via diamond saw cutting is based on limited demolition measurements collected during Year 2 monitoring (maximum rms SPLs ranging from 152–155 dB rms), resulting in a conservative maximum assumed source level of 155 dB rms. For use of the diamond saw and for vibratory extraction of piles at NMAWC, practical spreading loss was assumed and distances were estimated to the assumed background sound level of 128 dB. Continued acoustic monitoring will target impact driving of concrete piles and use of the diamond saw. Please see Tables 6–4 and 6–5 in the Navy's application for more detail.

TABLE 5—DISTANCES TO RELEVANT THRESHOLDS

Activity	Distance to threshold in meters					
	190 dB	180 dB	160 dB	120 dB	100 dB	90 dB
Impact driving, 30-in steel piles [1]	[1] 75	[1] 350	2,000	n/a	80	233
Vibratory driving, 30-in steel piles	[2] <10	<10	n/a	3,000	.....	.....
Impact driving, 24 x 30 concrete piles	20	50	470	n/a	42	149
Impact driving, 16-in concrete-filled fiberglass piles	20	50	270	n/a	.....	.....
Impact driving, 16-in concrete piles (NMAWC)	<10	<10	126	n/a	105	728
Vibratory extraction, 16-in concrete piles (NMAWC)	<10	<10	n/a	631	.....	.....
Diamond saw cutting (demolition)	<10	<10	n/a	631	.....	.....

[1] The buffered zones for use in mitigation will be 150 m and 450 m, respectively.
[2] The minimum shutdown zone for all activities is 10 m.

Airborne Sound

Although sea lions are known to haul-out regularly on man-made objects in the vicinity of the project site (see Figure 4–1 of the Navy's application), and harbor seals are occasionally observed hauled out on rocks along the shoreline in the vicinity of the project site, none of these are within the ZOIs for airborne sound, and we believe that incidents of take resulting solely from airborne sound are unlikely. The zones for sea lions are within the minimum shutdown zone defined for underwater sound and, although the zones for harbor seals are larger, they have not been observed to haul out as readily on man-made structure in the immediate vicinity of the project site. There is a possibility that an animal could surface in-water, but with head out, within one of the defined zones and thereby be exposed to levels of airborne sound that we associate with harassment, but any such occurrence would likely be accounted for in our estimation of incidental take from underwater sound.

We generally recognize that pinnipeds occurring within an estimated airborne harassment zone, whether in the water or hauled out, could be exposed to airborne sound that may result in behavioral harassment. However, any animal exposed to airborne sound above the behavioral harassment threshold is likely to also be exposed to underwater sound above relevant thresholds (which are typically in all cases larger zones than those associated with airborne sound). Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Multiple incidents of exposure to sound above NMFS' thresholds for behavioral harassment are not believed to result in increased behavioral disturbance, in either nature or intensity of disturbance reaction. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here. Distances associated with airborne sound and shown in Table 5 are for reference only.

Marine Mammal Densities

For all species, the best scientific information available was considered for use in the marine mammal take assessment calculations. Although various regional offshore surveys for marine mammals have been conducted, it is unlikely that these data would be representative of the species or numbers that may be encountered in San Diego Bay. However, the Navy has conducted a large number of ongoing site-specific marine mammal surveys during appropriate seasons (*e.g.,* Merkel and Associates, 2008; Johnson, 2010, 2011; Lerma, 2012, 2014). Whereas analyses for the first-year IHA relied on surveys conducted from 2007–12, continuing surveys by the Navy have generally indicated increasing abundance of all species and the second-year IHA relied on 2012–14 survey data. In addition, the Navy has developed estimates of marine mammal densities in waters associated with training and testing areas (including Hawaii-Southern California) for the Navy Marine Species Density Database (NMSDD). A technical report (Hanser *et al.,* 2015) describes methodologies and available information used to derive these densities, which are based upon the best available information, except where specific local abundance information is available and applicable to a specific action area. The document is publicly available on the Internet at: *nwtteis.com/DocumentsandReferences/NWTTDocuments/SupportingTechnicalDocuments.aspx* (accessed July 27, 2016).

Year 2 project monitoring showed even greater abundance of certain species, and we consider all of these data in order to provide the most up-to-date estimates for marine mammal abundances during the period of this proposed IHA. Although Year 3 project monitoring showed declines in marine mammal abundance in the vicinity of the project, we retain prior density estimates as a conservative measure for estimating exposure. Density information is shown in Table 7. These data are from dedicated line-transect surveys, required project marine mammal monitoring, opportunistic observations for more rarely observed species (see Figures 3–1 through 3–5 of the Navy's application), or the NMSDD.

Description of Take Calculation

The following assumptions are made when estimating potential incidences of take:

- All marine mammal individuals potentially available are assumed to be present within the relevant area, and thus incidentally taken;
- An individual can only be taken once during a 24-h period;
- The assumed ZOIs and days of activity are as shown in Table 6; and,
- Exposures to sound levels at or above the relevant thresholds equate to take, as defined by the MMPA.

In this case, the estimation of marine mammal takes uses the following calculation:

Exposure estimate = n * ZOI * days of total activity

where:

n = density estimate used for each species/season

ZOI = sound threshold ZOI area; the area encompassed by all locations where the SPLs equal or exceed the threshold being evaluated.

The ZOI impact area is estimated using the relevant distances in Table 5, assuming that sound radiates from a central point in the water column slightly offshore of the existing pier and

taking into consideration the possible affected area due to topographical constraints of the action area (*i.e.*, radial distances to thresholds are not always reached). When local abundance is the best available information, in lieu of the density-area method described above, we may simply multiply some number of animals (as determined through counts of animals hauled-out) by the number of days of activity, under the assumption that all of those animals will be present and incidentally taken on each day of activity.

TABLE 6—AREAS OF ACOUSTIC INFLUENCE AND DAYS OF ACTIVITY

Activity	Number of days	ZOI (km^2)
Impact and vibratory driving, 30-in steel piles [1]	24	5.6752
Vibratory removal, 30-in steel piles	6	5.6752
Impact driving, 24 x 32-in concrete piles	28	0.5377
Impact driving, 16-in concrete-filled fiberglass piles	1	0.2180
Diamond saw cutting	69	0.8842
Impact driving, 16-in concrete piles (NMAWC)	10	0.0436
Vibratory removal, 16-in concrete piles (NMAWC)	8	2.7913

[1] We assume that impact driving of 30-in steel piles would always occur on the same day as vibratory driving of the same piles. Therefore, the impact driving ZOI (3.8894 km^2) would always be subsumed by the vibratory driving ZOI.

Where appropriate, we use average daily number of individuals observed within the project area during Navy marine mammal surveys converted to a density value by using the largest ZOI as the effective observation area. It is the opinion of the professional biologists who conducted these surveys that detectability of animals during these surveys, at slow speeds and under calm weather and excellent viewing conditions, approached one hundred percent.

There are a number of reasons why estimates of potential incidents of take may be conservative, assuming that available density or abundance estimates and estimated ZOI areas are accurate (aside from the contingency correction discussed above). We assume, in the absence of information supporting a more refined conclusion, that the output of the calculation represents the number of individuals that may be taken by the specified activity. In fact, in the context of stationary activities such as pile driving and in areas where resident animals may be present, this number more realistically represents the number of incidents of take that may accrue to a smaller number of individuals. While pile driving can occur any day throughout the period of validity, and the analysis is conducted on a per day basis, only a fraction of that time (typically a matter of hours on any given day) is actually spent pile driving. The potential effectiveness of mitigation measures in reducing the number of takes is typically not quantified in the take estimation process. For these reasons, these take estimates may be conservative. See Table 7 for total estimated incidents of take.

California Sea Lion

The NMSDD reports estimated densities for north and central San Diego Bay of 5.8 animals/km^2 for the summer and fall periods and 2.5 animals/km^2 during the winter and spring (based on surveys conducted 2007–11; note that the NMSDD does not present density estimates specific to San Diego Bay for other species). For the first-year IHA, the Navy reported an average abundance of approximately sixty individuals per survey day (approximately equating to the reported density). However, Year 2 project monitoring showed an average of 90.35 individuals per day occurring within the project area (*i.e.*, 5.6752 km^2). This includes both hauled-out and swimming individuals. For California sea lions, the most common species in northern San Diego Bay and the only species with regular occurrence in the project area, we determined that this value—derived from the most recent monitoring effort—would be appropriate for use in estimating potential incidents of take.

Harbor Seal

Harbor seals are relatively uncommon within San Diego Bay. Previously, sightings in the Navy transect surveys of northern San Diego Bay were limited to individuals outside of the ZOI, on the south side of Ballast Point. These individuals had not been observed entering or transiting the project area and were believed to move from this location to haul-outs further north at La Jolla. Separately, marine mammal monitoring conducted by the Navy intermittently from 2010–14 had documented up to four harbor seals near Pier 122 (within the ZOI) at various times, with the greatest number of sightings during April and May. This information was used in previous IHA analysis, wherein we assumed that three harbor seals could be present for up to thirty days of the project. However, Year 2 project monitoring indicated an average abundance of 2.83 individuals per day in the project area. Animals were seen swimming as well as hauled out on rocks along the shoreline of NBPL. Although it is unknown whether this increase in abundance is a temporary phenomenon we use this new information on a precautionary basis as the best available information, and assume that this number of animals could be present on any day of the project. The NMSDD provides a maximum density estimate of 0.02 animals/km^2 for southern California, but site-specific information indicates that harbor seals are more common within the northern San Diego Bay project area than this density would suggest.

Gray Whale

The NMSDD provides a density of 0.115 animals/km^2 for southern California waters from shore to 5 nm west of the Channel Islands (winter/spring only; density assumed to be zero during summer/fall), a value initially reported by Carretta *et al.* (2000) for gray whales around San Clemente Island in the Southern California Bight. Gray whales were seen only from January–April. In the project area, observational data for gray whales is limited and their occurrence considered infrequent and unpredictable. On the basis of limited information—in recent years, solitary individuals have entered the bay and remained for varying lengths of time in 2009, 2010, 2011, and 2014, and whales more regularly transit briefly past the mouth of San Diego Bay—we assume here that the NMSDD density is applicable, while acknowledging that it likely represents a precautionary estimate for waters within the Bay as

opposed to those outside the mouth of the bay that whales are more likely to transit through. Incidental harassment of gray whales could result from some combination of individuals briefly transiting near the mouth of the bay and from individuals entering the bay and lingering in the project area.

Bottlenose Dolphin

Coastal bottlenose dolphins can occur at any time of year in San Diego Bay. Numbers sighted during Navy transect surveys have been highly variable, ranging from zero to forty individuals (observed dolphins are assumed to have been of the coastal stock). An uncorrected average of 2.1 bottlenose dolphins was observed during recent Navy surveys (September 2012 through April 2014), although nineteen animals were observed in a single survey. As reported in the NMSDD, Dudzik *et al.* (2006) provide a uniform density for California coastal dolphins of 0.4 animals/km^2 within 1 km of the coast from Baja to San Francisco in all four seasons. However, given the high variability observed in terms of numbers and locations of bottlenose dolphin sightings, we believe it appropriate to take a precautionary approach to take estimation use Year 2 sightings (7.09 individuals per day) as the basis for a density value.

Common Dolphin

Common dolphins are present in the coastal waters outside of San Diego Bay, but have typically been observed in the bay only infrequently and were never seen during the Navy's surveys. However, the previously described observations of common dolphins in the project area during in 2014 prompted their inclusion in the second IHA, a decision supported by increased observations of common dolphins during Year 2. There have not been enough sightings of common dolphins in San Diego Bay to develop a reliable estimate specific to the project area. Sightings of long-beaked common dolphins are predominantly near shore, and have been documented during Navy training exercises just offshore and to the south of San Diego Bay, whereas those of short-beaked common dolphins extend throughout the coastal and offshore waters. The NMSDD provides an all-season density estimate of 0.1 animals/km^2 for the long-beaked common dolphin within southern California waters (derived from Ferguson and Barlow [2003] and Barlow and Forney [2007]). However, given the large numbers of dolphins and increasing observations during 2014–15, we use the sighting rate of 8.67 dolphins per day as the basis for a density value. Although short-beaked common dolphins are less common in nearshore waters than are long-beaked, and are expected to be less likely to occur in the project area, we assign a single value to all common dolphins that may occur in the project area. Any incidents of take could be of either long-beaked or short-beaked common dolphins.

Pacific White-Sided Dolphin

Pacific white-sided dolphins are not known from the project area, but were observed in the bay on several occasions during Year 2 monitoring (0.28 individuals per day). This information produces a density estimate slightly lower than that found in Hanser *et al.* (2015), and is the only information available for use in estimating potential exposures.

Risso's Dolphin

Although no Risso's dolphins have not been observed in the project area, they are one of the more common species known from deeper waters nearby. Therefore, we use the regional density estimate from Hanser *et al.* (2015) in estimating potential exposures.

Northern Elephant Seal

Only one elephant seal has been observed in the project area, but given the increasing regional abundances for this species, we believe it reasonable to propose take authorization, and the regional density estimate found in Hanser *et al.* (2015) is used here. It is unlikely that elephant seals would haul out on any structures within the airborne ZOIs, and we do not consider harassment via airborne noise as a possibility for this species.

TABLE 7—CALCULATIONS FOR INCIDENTAL TAKE ESTIMATION

Species	Density	Vibratory driving/ removal, steel [1]	Impact driving, concrete 24 x 30	Impact driving, concrete/ fiberglass 16-in	Diamond saw	Impact driving, concrete (NMAWC)	Vibratory removal, concrete (NMAWC)	Total proposed authorized takes (% of total stock)
California sea lion.	15.9201	2,710	240	3	971	7	113	4,044 (1.4).
Harbor seal ..	0.4987	85	8	0	30	0	4	127 (0.4).
Bottlenose dolphin.	1.2493	213	19	0	76	1	9	318 (64.0).[2]
Common dolphin.	1.5277	260	23	0	93	1	11	388 (0.4 [LB]/0.1 [SB]).[3]
Gray whale ...	0.115	20	2	0	7	0	1	30 (0.1).
Northern elephant seal.	0.0508	9	1	0	3	0	0	13 (0.01).
Pacific white-sided dolphin.	0.0493	8	1	0	3	0	0	12 (0.04).
Risso's dolphin.	0.2029	35	3	0	12	0	1	51 (0.8).

[1] We assume that impact driving of steel piles would occur on the same day as vibratory driving of the same piles and that the zone for vibratory driving would always subsume the zone for impact driving. Therefore, separate estimates are not provided for impact driving of steel piles.

[2] Total stock assumed to be 500 for purposes of calculation. See Table 1.

[3] LB = long-beaked; SB = short-beaked.

Analyses and Preliminary Determinations

Negligible Impact Analysis

NMFS has defined "negligible impact" in 50 CFR 216.103 as ". . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through behavioral harassment, we consider other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

Construction and demolition activities associated with the pier replacement project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) only, from underwater sounds generated from pile driving. Potential takes could occur if individuals of these species are present in the ensonified zone when pile driving or removal is happening.

No injury, serious injury, or mortality is anticipated given the nature of the activity and measures designed to minimize the possibility of injury to marine mammals. The potential for these outcomes is minimized through the construction method and the implementation of the planned mitigation measures. For example, use of vibratory hammers does not have significant potential to cause injury to marine mammals due to the relatively low source levels produced and the lack of potentially injurious source characteristics. Impact pile driving produces short, sharp pulses with higher peak levels and much sharper rise time to reach those peaks. When impact driving is necessary, required measures (implementation of buffered shutdown zones) significantly reduce any possibility of injury. Given sufficient "notice" through use of soft start (for impact driving), marine mammals are expected to move away from a sound source that is annoying prior to its becoming potentially injurious. The likelihood that marine mammal detection ability by trained observers is high under the environmental conditions described for San Diego Bay (approaching one hundred percent detection rate, as described by trained biologists conducting site-specific surveys) further enables the implementation of shutdowns to avoid injury, serious injury, or mortality.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from past years of this project and other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff, 2006; HDR, 2012; Lerma, 2014). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. In response to vibratory driving, pinnipeds (which may become somewhat habituated to human activity in industrial or urban waterways) have been observed to orient towards and sometimes move towards the sound. The pile driving activities analyzed here are similar to, or less impactful than, numerous other construction activities conducted in San Francisco Bay and in the Puget Sound region, which have taken place with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in fitness for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the project area while the activity is occurring.

In summary, this negligible impact analysis is founded on the following factors: (1) The possibility of injury, serious injury, or mortality may reasonably be considered discountable; (2) the anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior; (3) the absence of any significant habitat within the project area, including rookeries, significant haul-outs, or known areas or features of special significance for foraging or reproduction; and (4) the presumed efficacy of the proposed mitigation measures in reducing the effects of the specified activity to the level of least practicable impact. In addition, these stocks are not listed under the ESA or considered depleted under the MMPA. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activity will have only short-term effects on individuals. The specified activity is not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, we preliminarily find that the total marine mammal take from Navy's pier replacement activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers Analysis

The number of incidents of take proposed for authorization for these stocks, with the exception of the coastal bottlenose dolphin (see below), would be considered small relative to the relevant stocks or populations (see Table 7) even if each estimated taking occurred to a new individual. This is an extremely unlikely scenario as, for pinnipeds occurring at the NBPL waterfront, there will almost certainly be some overlap in individuals present day-to-day and in general, there is likely to be some overlap in individuals present day-to-day for animals in estuarine/inland waters.

The proposed numbers of authorized take for bottlenose dolphins are higher relative to the total stock abundance estimate and would not represent small numbers if a significant portion of the take was for a new individual. However, these numbers represent the estimated incidents of take, not the number of individuals taken. That is, it is likely that a relatively small subset of California coastal bottlenose dolphins would be incidentally harassed by project activities. California coastal bottlenose dolphins range from San Francisco Bay to San Diego (and south

into Mexico) and the specified activity would be stationary within an enclosed water body that is not recognized as an area of any special significance for coastal bottlenose dolphins (and is therefore not an area of dolphin aggregation, as evident in Navy observational records). We therefore believe that the estimated numbers of takes, were they to occur, likely represent repeated exposures of a much smaller number of bottlenose dolphins and that, based on the limited region of exposure in comparison with the known distribution of the coastal bottlenose dolphin, these estimated incidents of take represent small numbers of bottlenose dolphins.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, we preliminarily find that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, we have determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

The Navy initiated informal consultation under section 7 of the ESA with NMFS Southwest Regional Office (now West Coast Regional Office) on March 5, 2013. NMFS concluded on May 16, 2013, that the proposed action may affect, but is not likely to adversely affect, WNP gray whales. The Navy has not requested authorization of the incidental take of WNP gray whales and no such authorization is proposed, and there are no other ESA-listed marine mammals found in the action area. Therefore, no consultation under the ESA is required.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), the Navy prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the human environment resulting from the pier replacement project. NMFS made the Navy's EA available to the public for review and comment, in relation to its suitability for adoption by NMFS in order to assess the impacts to the human environment of issuance of an IHA to the Navy. Also in compliance with NEPA and the CEQ regulations, as well as NOAA Administrative Order 216–6, NMFS has reviewed the Navy's EA, determined it to be sufficient, and adopted that EA and signed a Finding of No Significant Impact (FONSI) on July 8, 2013.

We have reviewed the Navy's application for a renewed IHA for ongoing construction activities for 2015–16 and the 2014–15 monitoring report. Based on that review, we have determined that the proposed action is very similar to that considered in the previous IHAs. In addition, no significant new circumstances or information relevant to environmental concerns have been identified. Thus, we have determined preliminarily that the preparation of a new or supplemental NEPA document is not necessary, and will, after review of public comments determine whether or not the existing EA and FONSI provide adequate analysis related to the potential environmental effects of issuing an IHA to the Navy. The 2013 NEPA documents are available for review at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.*

Proposed Authorization

As a result of these preliminary determinations, we propose to issue an IHA to the Navy for conducting the described pier replacement activities in San Diego Bay, for a period of one year from the date of issuance, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The proposed IHA language is provided next.

This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

1. This Incidental Harassment Authorization (IHA) is valid from October 8, 2016, through October 7, 2017.

2. This IHA is valid only for pile driving and removal activities associated with the fuel pier replacement project in San Diego Bay, California.

3. General Conditions

(a) A copy of this IHA must be in the possession of the Navy, its designees, and work crew personnel operating under the authority of this IHA.

(b) The species authorized for taking are the harbor seal (*Phoca vitulina richardii*), California sea lion (*Zalophus californianus*), bottlenose dolphin (*Tursiops truncatus truncatus*), common dolphin (*Delphinus delphis*), northern elephant seal (*Mirounga angustirostris*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), Risso's dolphin (*Grampus griseus*), and gray whale (*Eschrichtius robustus*).

(c) The taking, by Level B harassment only, is limited to the species listed in condition 3(b). See Table 1 for numbers of take authorized.

TABLE 1—AUTHORIZED TAKE NUMBERS, BY SPECIES

Species	Authorized take
Harbor seal	118
California sea lion	3,757
Northern elephant seal	12
California coastal bottlenose dolphin	295
Pacific white-sided dolphin	12
Risso's dolphin	48
Common dolphin	361
Gray whale	27

(d) The taking by injury (Level A harassment), serious injury, or death of any of the species listed in condition 3(b) of the Authorization or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA.

(e) The Navy shall conduct briefings between construction supervisors and crews, marine mammal monitoring team, acoustic monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

4. Mitigation Measures

The holder of this Authorization is required to implement the following mitigation measures:

(a) For all pile driving, the Navy shall implement a minimum shutdown zone of 10 m radius around the pile. If a marine mammal comes within or approaches the shutdown zone, such operations shall cease. See Table 2 for minimum radial distances required for shutdown zones.

TABLE 2—RADIAL DISTANCE TO SHUTDOWN AND DISTURBANCE ZONES ASSOCIATED WITH RELEVANT THRESHOLDS, INCLUDING BUFFERS

Activity	Distance to threshold in meters			
	190 dB	180 dB	160 dB	120 dB
Impact driving, steel piles	150	450	2,000	n/a
Vibratory driving/removal, steel piles	10	10	n/a	3,000
Impact driving, concrete piles	40	100	470	n/a
Impact driving, concrete/fiberglass piles	40	100	270	n/a
Diamond saw cutting	10	10	n/a	400
Impact driving, concrete piles (NMAWC)	10	10	130	n/a
Vibratory removal, concrete piles (NMAWC)	10	10	n/a	2,160

(b) The Navy shall shutdown activity as appropriate upon observation of any species for which take is not authorized. Activity shall not be resumed until those species have been observed to leave the relevant zone or until one hour has elapsed.

(c) The Navy shall deploy marine mammal observers as described below and as indicated in the Acoustic and Marine Species Monitoring Plan (Monitoring Plan; attached).

i. For all pile driving and applicable demolition activities, a minimum of one observer shall be stationed at the active pile driving rig in order to monitor the shutdown zones.

ii. For pile driving of 30-in steel piles, at least four additional observers shall be positioned for optimal monitoring of the surrounding waters. During impact driving of steel piles, one of these shall be stationed for optimal monitoring of the cetacean Level A injury zone (see Table 2), while others may be positioned at the discretion of the Navy for optimal fulfillment of both acoustic monitoring objectives and monitoring of the Level B harassment zone. During all other pile driving, at least one additional observer shall be deployed and may be positioned at the discretion of the Navy for optimal fulfillment of both acoustic monitoring objectives and monitoring of the Level B harassment zone.

iii. These observers shall record all observations of marine mammals, regardless of distance from the pile being driven, as well as behavior and potential behavioral reactions of the animals. Photographs must be taken of any observed gray whales.

iv. All observers shall be equipped for communication of marine mammal observations amongst themselves and to other relevant personnel (*e.g.,* those necessary to effect activity delay or shutdown).

(d) Monitoring shall take place from fifteen minutes prior to initiation of pile driving activity through thirty minutes post-completion of pile driving activity. Pre-activity monitoring shall be conducted for fifteen minutes to ensure that the shutdown zone is clear of marine mammals, and pile driving may commence when observers have declared the shutdown zone clear of marine mammals. In the event of a delay or shutdown of activity resulting from marine mammals in the shutdown zone, animals shall be allowed to remain in the shutdown zone (*i.e.,* must leave of their own volition) and their behavior shall be monitored and documented. Monitoring shall occur throughout the time required to drive a pile. The shutdown zone must be determined to be clear during periods of good visibility (*i.e.,* the entire shutdown zone and surrounding waters must be visible to the naked eye).

(e) If a marine mammal approaches or enters the shutdown zone, all pile driving activities at that location shall be halted. If pile driving is halted or delayed due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or fifteen minutes have passed without re-detection of the animal.

(f) Monitoring shall be conducted by qualified observers, as described in the Monitoring Plan. Trained observers shall be placed from the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator.

(g) The Navy shall use soft start techniques recommended by NMFS for impact pile driving. Soft start for impact drivers requires contractors to provide an initial set of strikes at reduced energy, followed by a thirty-second waiting period, then two subsequent reduced energy strike sets. Soft start shall be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer.

(h) Pile driving shall only be conducted during daylight hours.

5. Monitoring

The holder of this Authorization is required to conduct marine mammal monitoring during pile driving activity. Marine mammal monitoring and reporting shall be conducted in accordance with the Monitoring Plan.

(a) The Navy shall collect sighting data and behavioral responses to pile driving for marine mammal species observed in the region of activity during the period of activity. All observers shall be trained in marine mammal identification and behaviors, and shall have no other construction-related tasks while conducting monitoring.

(b) For all marine mammal monitoring, the information shall be recorded as described in the Monitoring Plan.

(c) The Navy shall conduct acoustic monitoring for representative scenarios of pile driving activity, as described in the Monitoring Plan.

6. Reporting

The holder of this Authorization is required to:

(a) Submit a draft report on all monitoring conducted under the IHA within 45 calendar days of the completion of marine mammal and acoustic monitoring, or sixty days prior to the issuance of any subsequent IHA for this project, whichever comes first. A final report shall be prepared and submitted within thirty days following resolution of comments on the draft report from NMFS. This report must contain the informational elements described in the Monitoring Plan, at minimum (see attached), and shall also include:

i. Detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any.

ii. Description of attempts to distinguish between the number of individual animals taken and the

number of incidences of take, such as ability to track groups or individuals.

iii. Results of acoustic monitoring, including the information described in in the Monitoring Plan.

(b) Reporting injured or dead marine mammals:

i. In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury, or mortality, Navy shall immediately cease the specified activities and report the incident to the Office of Protected Resources (301–427–8425), NMFS, and the West Coast Regional Stranding Coordinator (206–526–6550), NMFS. The report must include the following information:

A. Time and date of the incident;

B. Description of the incident;

C. Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);

D. Description of all marine mammal observations in the 24 hours preceding the incident;

E. Species identification or description of the animal(s) involved;

F. Fate of the animal(s); and

G. Photographs or video footage of the animal(s).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Navy to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Navy may not resume their activities until notified by NMFS.

i. In the event that Navy discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), Navy shall immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS.

The report must include the same information identified in 6(b)(i) of this IHA. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Navy to determine whether additional mitigation measures or modifications to the activities are appropriate.

ii. In the event that Navy discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), Navy shall report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. Navy shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

7. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

Request for Public Comments

We request comment on our analysis, the draft authorization, and any other aspect of this Notice of Proposed IHA for Navy's pier replacement activities. Please include with your comments any supporting data or literature citations to help inform our final decision on Navy's request for an MMPA authorization.

Dated: August 4, 2016.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–18847 Filed 8–8–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

U.S. Integrated Ocean Observing System (IOOS®) Advisory Committee

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of availability for final programmatic environmental assessment and finding of no significant impact.

SUMMARY: The U.S. IOOS office, National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), has finalized a Programmatic Environmental Assessment (PEA) which analyzed the potential environmental impacts associated with ocean observing activities including sensors and instrumentation; vessels (including personal watercraft) and sampling; autonomous underwater vehicles (AUV), gliders, and drifters; moorings, marine stations, buoys, and fixed arrays; High Frequency radar (HF radar); and sound navigation and ranging (sonar) and light detection and ranging (lidar) and prepared a Finding of No Significant Impact (FONSI) to the environmental resources within U.S. IOOS regions.

In parallel with the preparation of the draft and final PEA, IOOS initiated and completed a technical review consultation with National Marine Fisheries Service (NMFS) Office of Habitat Conservation Essential Fish Habitat (EFH), regarding the Magnuson-Stevens Act. Furthermore, subsequent to extensive discussion with and training by NMFS Office of Protected Resources (OPR) under the National Marine Sanctuaries, Endangered Species and Marine Mammal Protection Acts, it has been determined that IOOS observing activities would have negligible or no impact to environmental resources under the proposed action. The IOOS proposed action provides a mitigation strategy to address any unique situations, on a site-specific basis, as more information becomes available.

The final PEA and signed FONSI are posted on the IOOS Web site at *https://ioos.noaa.gov/about/governance-and-management/environmental-compliance/.*

FOR FURTHER INFORMATION CONTACT: Regina Evans, U.S. IOOS Program, 1315 East-West Highway, 2nd Floor, Silver Spring, MD 20910, Silver Spring, MD 20910; Phone 240–533–9468; Fax 301–713–3281; Email *regina.evans@noaa.gov.*

SUPPLEMENTARY INFORMATION: Observing activities support the core mission of U.S. IOOS: systematic provision of readily accessible marine environmental data and data products in an interoperable, reliable, timely, and user-specified manner to end-users/customers to serve seven critical and expanding societal needs: (1) Improve predictions of climate change and weather and their effects on coastal communities and the nation; (2) Improve the safety and efficiency of maritime operations; (3) More effectively mitigate the effects of natural hazards; (4) Improve national and homeland security; (5) Reduce public health risks; (6) More effectively protect and restore healthy coastal ecosystems; and (7) Enable the sustained use of ocean and coastal resources.

IOOS's conclusion of no significant impact is based on the best available scientific data and consultations with underwater acoustic experts and biologists from NMFS. Special emphasis was placed on the impacts to marine mammals, endangered species, and essential fish habitat. IOOS has adopted conservation recommendations from EFH and project design criteria (PDC), or best management practices, which

were created to avoid adverse effects to all ESA-listed species and designated critical habitats from OPR. As implemented, the conservation recommendations and PDCs would insure that all U.S. IOOS funded activities (individually and in aggregate) avoid adverse effects to protected resources.

Dated: July 26, 2016.

Zdenka Willis,

Director, U.S. Integrated Ocean Observing System Office.

[FR Doc. 2016–18842 Filed 8–8–16; 8:45 am]

BILLING CODE P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before September 8, 2016.

ADDRESSES: Comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, may be submitted directly to the Office of Information and Regulatory Affairs (OIRA) in OMB, within 30 days of the notice's publication, by email at *OIRAsubmissions@omb.eop.gov*. Please identify the comments by OMB Control No. 3038–0017. Please provide the Commodity Futures Trading Commission ("CFTC" or "Commission") with a copy of all submitted comments at the address listed below. Please refer to OMB Reference No. 3038–0017, found on *http://reginfo.gov*. Comments may also be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Commodity Futures Trading Commission, 725 17th Street NW., Washington, DC 20503, and to: Gary Martinaitis, Associate Director, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; or through the CFTC Web site at *http://comments.cftc.gov*. Follow the instructions for submitting comments through the Web site.

Comments may also be mailed to: Christopher J. Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581 or by Hand Deliver/Courier at the same address.

A copy of the supporting statements for the collection of information discussed above may be obtained by visiting *RegInfo.gov*. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov*.

FOR FURTHER INFORMATION CONTACT: Gary Martinaitis, Associate Director, Division of Market Oversight, Commodity Futures Trading Commission, (202) 418–5209; email: *gmartinaitis@cftc.gov*, and refer to OMB Control No. 3038–0017. A copy may also be obtained from this contact.

SUPPLEMENTARY INFORMATION:

Title: Notice of Intent to Renew Collection, Market Surveys (OMB Control No. 3038–0017). This is a request for extension of a currently approved information collection.

Abstract: Under Commission Rule 21.02, upon call by the Commission, information must be furnished related to futures or options positions held or introduced by futures commission merchants, members of contract markets, introducing brokers, and foreign brokers and, for options positions, by each reporting market. This rule is designed to assist the Commission in prevention of market manipulation and is promulgated pursuant to the Commission's rulemaking authority contained in section 8a of the Commodity Exchange Act, 7 U.S.C. 12a (2010).

Burden Statement: The respondent burden for this collection is estimated to be as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR §	Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
21.02	400	Annually	400	1.75	700

The total annual cost burden per respondent is estimated to be $38,500. The Commission based its calculation on a blended hourly wage rate of $55 for a Programmer and Compliance Manager.[1]

Authority: 44 U.S.C. 3501 *et seq.*

[1] In arriving at a wage rate for the hourly costs imposed, Commission staff used the Management & Professional Earnings in the Securities Industry Report, published in 2013 by the Securities Industry and Financial Markets Associations (Report). The wage rate used the median salary of a Programmer and Compliance Manager as published in the 2013 Report and divided that figure by 2000 annual working hours to arrive at the hourly rate of $55.

Dated: August 4, 2016.

Christopher J. Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2016–18859 Filed 8–8–16; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Government-Industry Advisory Panel; Notice of Federal Advisory Committee Meeting

AGENCY: Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics), Department of Defense (DoD).

ACTION: Federal advisory committee meeting notice.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal advisory committee meeting of the Government-Industry Advisory Panel. This meeting is open to the public.

DATES: The meeting will be held from 9:00 a.m. to 5:00 p.m. on Tuesday, August 23, 2016. Public registration will begin at 8:45 p.m. For entrance into the meeting, you must meet the necessary requirements for entrance into the Pentagon. For more detailed information, please see the following link: *http://www.pfpa.mil/access.html.*

ADDRESSES: Pentagon Library, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155. The meeting will be held in Room M1. The Pentagon Library is located in the Pentagon Library and Conference Center (PLC2) across the Corridor 8 bridge.

FOR FURTHER INFORMATION CONTACT: LTC Andrew Lunoff, Office of the Assistant Secretary of Defense (Acquisition), 3090 Defense Pentagon, Washington, DC 20301–3090, email: *andrew.s.lunoff.mil@mail.mil*, phone: 571–256–9004.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (FACA) (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150. The Government-Industry Advisory Panel will review sections 2320 and 2321 of title 10, United States Code (U.S.C.), regarding rights in technical data and the validation of proprietary data restrictions and the regulations implementing such sections, for the purpose of ensuring that such statutory and regulatory requirements are best structured to serve the interest of the taxpayers and the national defense. The scope of the panel is as follows: (1) Ensuring that the Department of Defense (DoD) does not pay more than once for the same work, (2) Ensuring that the DoD contractors are appropriately rewarded for their innovation and invention, (3) Providing for cost-effective reprocurement, sustainment, modification, and upgrades to the DoD systems, (4) Encouraging the private sector to invest in new products, technologies, and processes relevant to the missions of the DoD, and (5) Ensuring that the DoD has appropriate access to innovative products, technologies, and processes developed by the private sector for commercial use.

Agenda: This will be the fifth meeting of the Government-Industry Advisory Panel with a series of meetings planned through December 14, 2016. The panel will cover details of 10 U.S.C. 2320 and 2321, begin understanding the implementing regulations and detail the necessary groups within the private sector and government to provide supporting documentation for their review of these codes and regulations during follow-on meetings. Agenda items for this meeting will include the following: (1) Planning, discussion and breakdown of statutes 10 U.S.C. 2320 and 2321; (2) Discussion on comments received via **Federal Register** Request for Public Comment; (3) Briefing from Joint Program Executive Office; (4) Briefing from Amazon Web Services; (5) Briefing on data rights effects on major logistics activities; (6) Public Comments; (7) Comment Adjudication & Planning for follow-on meeting.

Availability of Materials for the Meeting: A copy of the agenda or any updates to the agenda for the August 23, 2016 meeting will be available as requested or at the following site: *https://database.faca.gov/committee/meetingdocuments.aspx?flr=141345&cid=2561*. Minor changes to the agenda will be announced at the meeting. All materials will be posted to the FACA database after the meeting.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Registration of members of the public who wish to attend the meeting will begin upon publication of this meeting notice and end three business days (August 18) prior to the start of the meeting. All members of the public must contact LTC Lunoff at the phone number or email listed in the **FOR FURTHER INFORMATION CONTACT** section to make arrangements for Pentagon escort, if necessary. Public attendees should arrive at the Pentagon's Visitor's Center, located near the Pentagon Metro Station's south exit and adjacent to the Pentagon Transit Center bus terminal with sufficient time to complete security screening no later than 8:30 a.m. on August 23. To complete security screening, please come prepared to present two forms of identification of which one must be a pictured identification card. Government and military DoD CAC holders are not required to have an escort, but are still required to pass through the Visitor's Center to gain access to the Building. Seating is limited and is on a first-to-arrive basis. Attendees will be asked to provide their name, title, affiliation, and contact information to include email address and daytime telephone number to the Designated Federal Officer (DFO) listed in the **FOR FURTHER INFORMATION CONTACT** section. Any interested person may attend the meeting, file written comments or statements with the committee, or make verbal comments from the floor during the public meeting, at the times, and in the manner, permitted by the committee.

Special Accommodations: The meeting venue is fully handicap accessible, with wheelchair access.

Individuals requiring special accommodations to access the public meeting or seeking additional information about public access procedures, should contact LTC Lunoff, the committee DFO, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section, at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Government-Industry Advisory Panel about its mission and/or the topics to be addressed in this public meeting. Written comments or statements should be submitted to LTC Lunoff, the committee DFO, via electronic mail, the preferred mode of submission, at the email address listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat or Microsoft Word. The comment or statement must include the author's name, title, affiliation, address, and daytime telephone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the committee DFO at least five (5) business days prior to the meeting so that they may be made available to the Government-Industry Advisory Panel for its consideration prior to the meeting. Written comments or statements received after this date may not be provided to the panel until its next meeting. Please note that because the panel operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection.

Verbal Comments: Members of the public will be permitted to make verbal comments during the meeting only at the time and in the manner allowed herein. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) business days in advance to the committee DFO, via electronic mail, the preferred mode of submission, at the email address listed in the **FOR FURTHER INFORMATION CONTACT** section. The committee DFO will log each request to make a comment, in the order received, and determine whether the subject matter of each comment is relevant to the panel's mission and/or the topics to be addressed in this public meeting. A 30-minute period near the end of the meeting will be available for verbal

public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described in this paragraph, will be allotted no more than three (3) minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO.

Dated: August 4, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–18813 Filed 8–8–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0055]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Study of Digital Learning Resources for Instructional English Learner Students

AGENCY: Office of Planning, Evaluation and Policy Development (OPEPD), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before September 8, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0055. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Julie Warner, 202–453–6043.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Study of Digital Learning Resources for Instructional English Learner Students.

OMB Control Number: 1875–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 1,188.

Total Estimated Number of Annual Burden Hours: 827.

Abstract: This study will examine the use of digital learning resources (DLRs) to support the English language acquisition and academic achievement of English Learners (ELs) in K–12 education. The goal of this study is to promote the understanding of the current use of DLRs for instructing EL students in order to inform further research and policy development efforts.

Dated: August 4, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–18870 Filed 8–8–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Grant Exclusive License

AGENCY: Office of the General Counsel, Department of Energy.

ACTION: Notice of intent to grant exclusive patent license.

SUMMARY: The Department of Energy (DOE) hereby gives notice that DOE intends to grant an exclusive license to practice the invention described and claimed in U.S. Patent Number 8,968,827 for "Methods of forming boron nitride" to TNT Ballistic Coating Technologies, Inc. having its principal place of business at Chicago, Illinois. The patent is owned by United States of America, as represented by DOE.

DATES: Written comments, objections, or nonexclusive license applications must be received at the address listed no later than August 24, 2016.

ADDRESSES: Comments, applications for nonexclusive licenses, or objections relating to the prospective exclusive license should be submitted through *Regulations.gov* or to Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, Room 6F–067, 1000 Independence Ave. SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Marianne Lynch, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, Room 6F–067, 1000 Independence Ave. SW., Washington, DC 20585; Email: *marianne.lynch@hq.doe.gov*; and Phone: (202) 586–3815.

SUPPLEMENTARY INFORMATION: This notice of intent to grant an exclusive license is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). The prospective exclusive license also complies with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

35 U.S.C. 209(c) gives DOE the authority to grant exclusive or partially exclusive licenses in federally-owned inventions where a determination is made, among other things, that the desired practical application of the invention has not been achieved, or is not likely to be achieved expeditiously, under a nonexclusive license. The statute and implementing regulations (37 CFR 404) require that the necessary determinations be made after public notice and opportunity for filing written comments and objections.

TNT Ballistic Coating Technologies has applied for an exclusive license to

practice the inventions embodied in the U.S. Patent Number 8,968,827 and has plans for commercialization of the inventions.

Within 15 days of publication of this notice, any person may submit in writing to DOE's Assistant General Counsel for Intellectual Property and Technology Transfer Office (see contact information), either of the following, together with supporting documents:

(i) A statement setting forth reasons why it would not be in the best interest of the United States to grant the proposed license; or (ii) An application for a nonexclusive license to the invention, in which applicant states that it already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The proposed license would be exclusive, subject to a license and other rights retained by the United States, and subject to a negotiated royalty. DOE will review all timely written responses to this notice, and will grant the licenses if, after expiration of the 15-day notice period, and after consideration of any written responses to this notice, a determination is made in accordance with 35 U.S.C. 209(c) that the licenses are in the public interest.

Brian Lally,

Acting Assistant General Counsel for Technology Transfer and Intellectual Property.

[FR Doc. 2016–18850 Filed 8–8–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Proposed Agency Information Collection Extension

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE).

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy pursuant to the Paperwork Reduction Act of 1995, is proposing to amend an information collection request with the Office of Management and Budget by adding an additional collection to an ICR that already includes two previously approved collections. The two previously approved collections address DOE's Plug-in Electric Vehicle (PEV) Scorecard, and the National Clean Fleets Partnership. The proposed new collection is entitled ''Ride and Drive Surveys for PEV Showcases''. DOE's Clean Cities initiative has developed a three-part voluntary ride-and-drive survey to assist its coalitions and stakeholders in assessing the level of interest, understanding, and acceptance of PEVs and alternative fuel vehicles (AFV) by the purchasing public. The principal objective of the Survey is to provide DOE and stakeholders with an objective assessment and estimate of how ready the purchasing public is for PEVs, and to help DOE's Clean Cities coalitions prepare for the successful deployment of these vehicles. DOE intends the surveys to be completed by individuals who are participating in one of many ride-and-drive events.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DOE, including whether the information shall have practical utility; (b) the accuracy of DOE's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before October 11, 2016. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments should be sent to: Desk Officer for the Department of Energy, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503.

And to Mr. Dennis Smith, Office of Energy Efficiency and Renewable Energy (EE–3V), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0121, or by fax at 202–586–1600, or by email at *cleancitiesinfo@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Smith at the address listed above in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: The amended information collection request contains (1) OMB No. 1910–5171; (2) Information Collection Request Title: Clean Cities Vehicle Programs; (3) Type of Review: Amended collection; (4) Purpose: As part of DOE's Office of Vehicle Technologies 2016 Funding Opportunity Announcement (FOA) awards, DOE is awarding entities funding to run PEV showcases where drivers can experience driving a variety of PEVs and learn about charging electric vehicles. These awards are 50 percent cost share awards, meaning that recipients of an award under this FOA must supply 50 percent of the funds to complete each awarded project. Projects undertaken pursuant to this FOA are expected to include a survey component related to potential vehicle driver behavior. Thus, the DOE Clean Cities program has developed an initiative, the Ride and Drive Surveys for PEV Showcases, that includes a three-part voluntary ride-and-drive survey to assist its coalitions and stakeholders in assessing the level of interest, understanding, and acceptance of AFVs by the purchasing public. The principal objective of the Surveys is to provide DOE and stakeholders with an objective assessment and estimate of how ready the purchasing public is for PEVs, and to help DOE's Clean Cities coalitions prepare for the successful deployment of these vehicles.

For the Ride and Drive Surveys for PEV Showcases collection, the effort will target public citizens who are participating in one of many Ride-and-Drive events. There are three phases to the Survey: (1) Pre Ride-and-Drive; (2) post Ride-and-Drive; and (3) a few months/some time later to discern if the respondent followed through with acquisition of a PEV or another AFV. Respondents would provide answers in the first two phases through a user-friendly paper survey and on-line survey, and in the third phase they would answer questions via an electronic interface, although a paper survey may be used for those lacking access to an electronic device or computer.

The Surveys' effort will rely on responses to questions the respondent chooses to answer. The multiple-choice will questions address the following topic areas: (1) Demographics; (2) Current vehicle background; (3) How they learned about ride and drive event; (3) Perceptions of PEVs before and after driving; (4) Post-drive vehicle experience; (5) Purchase expectations; (6) Follow-up survey subsequent behaviors; (7) Purchase information; (8) Barriers; and (9) Future intentions.

DOE expects a total respondent population for the amended collection (which would include the three collections) of approximately 16,250 respondents (an increase of 15,000 over the number of respondents for the two currently approved collections). Selecting the multiple choice answers in

completing the three components of the Survey is expected to take 30 minutes, leading to a total burden of approximately 28,250 hours (an increase 2,500 hours above the total burden in hours for the two currently approved collections).

(5) Type of Respondents: Public; (6) Annual Estimated Number of Respondents for all three information collections: 16,250; (7) Annual Estimated Number of Total Responses: 16,300; (7) Annual Estimated Number of Burden Hours: 28,250 (25,625 for PEV Scorecard, 125 for Clean Fleets Partnership, and 2,500 for the Ride and Drive Surveys for PEV Showcases); and (8) Annual Estimated Reporting and Recordkeeping Cost Burden: There is no cost associated with reporting and recordkeeping.

Statutory Authority: 42 U.S.C. 13233; 42 U.S.C. 13252 (a)–(b); 42 U.S.C. 13255.

Issued in Washington, DC, on August 3, 2016.

Kathryn C. Cooper,

Acting Director, Vehicle Technologies Office, Energy Efficiency and Renewable Energy.

[FR Doc. 2016–18849 Filed 8–8–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP16–1085–000.

Applicants: Northern Natural Gas Company.

Description: Files a Petition for a Limited Waiver of Northern Natural Gas Company under RP16–1085.

Filed Date: 7/7/16.

Accession Number: 20160707–5096.

Comments Due: 5 p.m. ET 8/8/16.

Docket Numbers: RP16–1103–000.

Applicants: Northern Natural Gas Company.

Description: § 4(d) Rate Filing: 20160623 Filing to Remove CS–1 Rate Schedule to be effective 8/25/2016.

Filed Date: 7/25/16.

Accession Number: 20160725–5117.

Comments Due: 5 p.m. ET 8/8/16.

Docket Numbers: RP16–1104–000.

Applicants: Midcontinent Express Pipeline LLC.

Description: § 4(d) Rate Filing: Filing to remove expiring Enerfin, Newfield and Tenaska agreements to be effective 8/1/2016.

Filed Date: 7/26/16.

Accession Number: 20160726–5068.

Comments Due: 5 p.m. ET 8/8/16.

Docket Numbers: RP16–1105–000.

Applicants: Northwest Pipeline LLC.

Description: § 4(d) Rate Filing: Small Customer Tariff Update to be effective 8/26/2016.

Filed Date: 7/26/16.

Accession Number: 20160726–5146.

Comments Due: 5 p.m. ET 8/8/16.

Docket Numbers: RP16–1106–000.

Applicants: Northwest Pipeline LLC.

Description: § 4(d) Rate Filing: LS–1 Rate Schedule Removal to be effective 8/26/2016.

Filed Date: 7/26/16.

Accession Number: 20160726–5147.

Comments Due: 5 p.m. ET 8/8/16.

Docket Numbers: RP16–1107–000.

Applicants: Northwest Pipeline LLC.

Description: § 4(d) Rate Filing: Measurment Adjustments/Corrections Filing to be effective 8/26/2016.

Filed Date: 7/26/16.

Accession Number: 20160726–5149.

Comments Due: 5 p.m. ET 8/8/16.

Docket Numbers: RP16–1108–000.

Applicants: Northwest Pipeline LLC.

Description: § 4(d) Rate Filing: Tariff Title Sheet Update to be effective 8/26/2016.

Filed Date: 7/26/16.

Accession Number: 20160726–5150.

Comments Due: 5 p.m. ET 8/8/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 27, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–18800 Filed 8–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD16–18–000]

City of Farmington, NM; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On July 28, 2016, the City of Farmington, NM filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA), as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The proposed Animas Hydroelectric Project would have an installed capacity of 250 kilowatts (kW) and would be located at the end of Willet Ditch, the last 75 feet of which varies in depth from 5.6 feet to 10 feet. The Willet Ditch is used for municipal water supply and irrigation. The project would be located near the City of Farmington in San Juan County, New Mexico.

Applicant Contact: Britt Chesnut, City of Farmington Electric Utility, 501 McCormick School Rd., Farmington, NM 87401, Phone No. (505) 599–8342.

FERC Contact: Robert Bell, Phone No. (202) 502–6062, email: *robert.bell@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) A proposed short 6-inch diameter pipe, (2) a proposed 250-kW turbine located at the end of Willet Ditch where it discharges into the Animas River, and (3) appurtenant facilities. The proposed project would have an estimated annual generating capacity of 1,080 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A), as amended by HREA ..	The conduit is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i), as amended by HREA	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA.	The facility has an installed capacity that does not exceed 5 megawatts	Y
FPA 30(a)(3)(C)(iii), as amended by HREA.	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: Based upon the above criteria, Commission staff has preliminarily determined that the proposal satisfies the requirements for a qualifying conduit hydropower facility under 16 U.S.C. 823a, and is exempted from the licensing requirements of the FPA.

Comments and Motions to Intervene: The deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

The deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the "COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY" or "MOTION TO INTERVENE," as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the "eLibrary" link. Enter the docket number (*e.g.,* CD16–18–000) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

Dated: August 3, 2016.

Kimberly Bose,

Secretary.

[FR Doc. 2016–18827 Filed 8–8–16; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.2001–2005 (2015).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the PJM Interconnection, L.L.C. (PJM):

PJM Planning Committee

August 11, 2016, 9:30 a.m.–12:00 p.m. (EST)

PJM Transmission Expansion Advisory Committee

August 11, 2016, 11:00 a.m.—3:00 p.m. (EST)

The above-referenced meetings will be held at: PJM Conference and Training Center, PJM Interconnection, 2750 Monroe Boulevard, Audubon, PA 19403.

The above-referenced meetings are open to stakeholders.

Further information may be found at *www.pjm.com.*

The discussions at the meetings described above may address matters at issue in the following proceedings:

Docket No. ER16–453, *PJM Interconnection, L.L.C. and Northeast Transmission Development, LLC*
Docket No. ER16–736, *PJM Interconnection, L.L.C.*
Docket No. ER14–972, *PJM Interconnection, L.L.C.*
Docket No. ER14–1485, *PJM Interconnection, L.L.C.*
Docket Nos. ER13–1944, *et al., PJM Interconnection, L.L.C., et al.*
Docket No. ER15–1344, *PJM Interconnection, L.L.C.*
Docket No. ER15–1387, *PJM Interconnection, L.L.C. and Potomac Electric Power Company*
Docket No. ER15–2562, *PJM Interconnection, L.L.C.*
Docket No. ER15–2563, *PJM Interconnection, L.L.C.*
Docket No. EL15–18, *Consolidated Edison Company of New York, Inc.* v. *PJM Interconnection, L.L.C.*
Docket No. EL15–41, *Essential Power Rock Springs, LLC, et. al.* v. *PJM Interconnection, L.L.C.*

Docket No. ER15–2114, *PJM Interconnection, L.L.C. and Transource West Virginia, LLC*
Docket No. EL15–79, *TransSource, LLC* v. *PJM Interconnection, L.L.C.*
Docket No. EL15–95, *Delaware Public Service Commission, et. al.,* v. *PJM Interconnection, L.L.C., et. al.*
Docket No. EL15–67, *Linden VFT, LLC* v. *PJM Interconnection, L.L.C.*
Docket No. EL05–121, *PJM Interconnection, L.L.C.*
Docket No. ER13–198, *PJM Interconnection, L.L.C.*
Docket No. ER16–1335, *PJM Interconnection, L.L.C.*
Docket No. ER16–1232, *PJM Interconnection, L.L.C.*
Docket No. ER16–1499, *PJM Interconnection, L.L.C.*
Docket No. ER16–1807, *First Energy Solutions Corp.*
Docket No. EL16–96, *PJM Interconnection, L.L.C.*

For more information, contact the following:

Jonathan Fernandez, Office of Energy Market Regulation, Federal Energy Regulatory Commission, (202) 502–6604, *Jonathan.Fernandez@ferc.gov*

Alina Halay, Office of Energy Market Regulation, Federal Energy Regulatory Commission, (202) 502–6474, *Alina.Halay@ferc.gov*

Dated: August 3, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–18829 Filed 8–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–2293–000]

Drift Sand Wind Project, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Drift Sand Wind Project, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 22, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–18802 Filed 8–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–2285–000]

Desert Wind Farm LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Desert Wind Farm LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 22, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–18801 Filed 8–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD16–18–000]

Competitive Transmission Development Technical Conference; Notice Inviting Post-Technical Conference Comments

On June 27–28, 2016, the Federal Energy Regulatory Commission held a Commissioner-led technical conference to discuss issues related to competitive transmission development processes, including, but not limited to, the use of cost containment provisions, the relationship of competitive transmission development to transmission incentives, and other ratemaking and transmission planning and development issues.

All interested persons are invited to file post-technical conference comments on the questions listed in the attachment to this Notice. Commenters need not respond to all questions asked. Commenters should organize responses consistent with the numbering of the attached questions and identify to what extent their responses are generally applicable, or pertain to a particular transmission planning region. Commenters may reference material previously filed in this docket, including the technical conference transcript, but are encouraged to submit new or additional information rather than reiterate information that is already in the record. In particular, Commenters are encouraged, when possible, to provide examples in support of their answers. These comments are due on or before September 2, 2016.

For more information about this Notice, please contact:

David Tobenkin (Technical Information), Office of Energy Policy and Innovation, (202) 502–6445 *david.tobenkin@ferc.gov*

Zeny Magos (Technical Information), Office of Energy Market Regulation, (202) 502–8244 *zeny.magos@ferc.gov*

Erica Siegmund Hough (Legal Information), Office of General Counsel, (202) 502–8251 *erica.siegmund@ferc.gov*

Dated: August 3, 2016.

Kimberly D. Bose,

Secretary.

Post-Technical Conference Questions for Comment

Panel One: Cost Containment Provisions in Competitive Transmission Development Processes [1]

1. How do public utility transmission providers in regions compare proposals with and without cost containment provisions for transmission facilities eligible to be selected in a regional transmission plan for purposes of cost allocation? Please provide examples. What, if any, guidance or requirements should the Commission provide with respect to the comparison of proposals with and without cost containment provisions?

2. What can public utility transmission providers in regions do to ensure there is sufficient transparency for transmission developers to understand: (a) How a proposal will be evaluated in advance of the proposal submission; (b) developments, if any, that occur during the evaluation process; and (c) the reasons the selection decision was made? Should cost containment provisions in all proposals, and not just winning proposals, be made known? What, if any, guidance or requirements should the Commission provide with respect to this issue?

3. Should there be standardization of cost containment provisions or exclusions of certain costs to facilitate comparison of proposals with differing cost containment provisions? If so, what role should the Commission and/or public utility transmission providers in regions play in pursuing standardization?

4. What quantitative and qualitative methods can public utility transmission providers in regions use to evaluate proposals with different cost containment provisions, such as cost caps with different exclusions or that cap different components of the revenue requirement?

[1] Competitive Transmission Development Processes refer to the process to select transmission facilities in the regional transmission plan for purposes of cost allocation and the process to provide a transmission developer of a selected transmission facility with the eligibility to use the regional cost allocation method. *See Further Supplemental Notice of Technical Conference, Attachment—Description of Key Concepts,* Docket No. AD16–18–000, at 13 (June 20, 2016).

Panel Two: Commission Consideration of Rates That Contain Cost Containment Provisions and Result From Competitive Transmission Development Processes

1. Should the Commission have a role in evaluating the rate-related components of competing proposals for transmission facilities eligible to be selected in a regional transmission plan for purposes of cost allocation (*e.g.,* terms of cost containment provisions, rate of return, transmission incentives) before the public utility transmission providers in a region select a proposal? If so, what role? What steps could the Commission take to prevent such a role from creating undue delays in transmission planning processes?

2. What types of performance-based rates could the Commission accept to reduce asymmetrical risk?

3. The Commission has accepted proposals to allow incumbent and non-incumbent transmission developers to recover, under certain circumstances, costs associated with developing transmission projects that are proposed but not selected in a regional transmission plan for purposes of cost allocation.[2] Should the Commission reexamine, in general, whether such costs may be recovered?

4. Which entities should monitor, verify, and/or enforce compliance with cost containment provisions of selected transmission facilities? What are effective ways for them to do so and what are the advantages and disadvantages of different approaches?

Panel Three: Transmission Incentives and Competitive Transmission Development Processes

1. Should the Commission pre-approve any or all of the following incentives for transmission facilities selected in a regional transmission plan for purposes of cost allocation through competitive transmission development processes: 100 percent construction work in progress in rate base; regulatory asset treatment; or recovery of 100 percent of the cost of abandoned facilities?

2. If there are benefits to customers from risk mitigation measures that transmission developers use in competitive transmission development processes, should the Commission revise its incentive policy to encourage similar risk mitigation measures that may provide customer benefits for

[2] *See, e.g., N.Y. Indep. Sys. Operator, Inc.,* 143 FERC ¶ 61,059, at P 326–327 (2013), *order on reh'g,* 148 FERC ¶ 61,044, at P 282 (2014); *ISO New England Inc.,* 143 FERC ¶ 61,150, at PP 350–351, 398–401 (2013); and *Xcel Energy Southwest Transmission Co., LLC,* 149 FERC ¶ 61,182, at P 94 (2014).

transmission projects that are not subject to a competitive transmission development process? If so, what risk mitigation measures should the Commission encourage through application of the incentive policy?

3. In light of the emphasis that Order No. 1000 places on regional transmission planning, do the risks and challenges of a particular transmission project remain an appropriate focal point for incentives requested pursuant to Federal Power Act section 219? If not, what are the attributes that warrant incentives?

4. What, if any, changes are needed to the framework the Commission uses to evaluate return on equity adders and other transmission incentives for transmission projects that use cost containment provisions?

5. Order No. 1000 requires public utility transmission providers in regions to have an ex ante cost allocation method for transmission facilities selected in the regional transmission plan for purposes of cost allocation. To what extent does the ex ante cost allocation method reduce risks to transmission developers?

6. Transmission developers face at least two types of risks: risk associated with participation in the transmission planning processes and risk associated with developing a transmission project. The Commission's current incentive policies focus on the latter. Please comment on risks associated with participation in the transmission planning processes and indicate what, if any, changes to the planning processes could mitigate the risk.

7. Do public utility transmission providers in regions consider that a transmission developer may request and be awarded transmission incentives when evaluating transmission proposals and, if so, how? For example, how would public utility transmission providers in regions consider a proposal with a potential transmission incentive given that the incentive might or might not be granted? Should a competitive transmission development process clearly state whether, and, if so, how incentives should be part of a developer's proposal and how requests and grants of such incentives will be evaluated by the public utility transmission providers in the region? Is there an optimal time for submission of incentive requests to the Commission and for Commission decisions upon them?

Panel Four: Interregional Transmission Coordination Issues

1. What factors have contributed to the lack of development of interregional transmission facilities (*i.e.*, a transmission facility that is located in two or more transmission planning regions)? Are there actions the Commission could take to facilitate such development?

2. What would be the advantages and disadvantages to the use of common models and assumptions by public utility transmission providers in regions in their interregional coordination processes? Are there problems that such an approach would solve or create? If such common models and assumptions could be developed, how should they be developed and by which entity or entities?

3. Should the Commission revisit Order No. 1000's requirement that an interregional transmission facility be selected in the regional transmission plan of all transmission planning regions where the facility will be located before it is eligible for interregional cost allocation? Why or why not?

4. What reforms, if any, could the Commission adopt to facilitate the identification of shared interregional transmission needs?

5. Do interregional cost allocation methods accepted by the Commission, such as the "avoided cost only" method, impede interregional transmission coordination? [3] If so, are there alternative cost allocation methods that could better facilitate interregional transmission development? Would those methods be consistent with interregional transmission coordination processes or would the interregional transmission coordination processes need to change to accommodate such alternative cost allocation methods?

Panel Five: Regional Transmission Planning and Other Transmission Development Issues

1. To maximize the benefits of competition, should the Commission broaden or narrow the type of transmission facilities that must be selected through competitive transmission development processes? If so, how?

2. Has the introduction of competition into the regional transmission planning processes led public utility transmission providers to focus more on developing local transmission facilities or other transmission facilities not subject to competitive transmission development processes?

3. Are there other competitive approaches compared to the existing competitive transmission development processes that could potentially reduce the time and cost to conduct the process, or the risk of litigation over proposal selection, but still benefit consumers? If so, what are the strengths and weaknesses of such approaches and could they be used in transmission planning regions in specified circumstances, for example, for transmission projects needed in the near-term to address reliability needs, in conjunction with existing competitive transmission development processes?

4. What types of information (please be specific) could be used to measure the impact of the Order No. 1000 reforms on transmission development? For example, what information could be used to evaluate whether the more efficient or cost-effective transmission facilities are being selected within and between transmission planning regions? How should that information be tracked and reported or posted? Should common metrics be developed for evaluation of the information?

5. How do the sponsorship model and competitive bidding model, respectively, and variations on these models, capture the benefits of competition, such as increased innovation and selection of the more efficient or cost-effective transmission facilities? What are the positive features and drawbacks of each model? How can their drawbacks be addressed?

6. Are changes to the Commission's current application of the Discounted Cash Flow (DCF) analysis needed to better accommodate nonincumbent transmission developers, in particular with respect to the identification of appropriate proxy groups? If so, what changes are necessary?

[3] *See, e.g. Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,045, at PP 176–180 (2015) (describing an "avoided-cost only method" and finding such an approach can comply with Interregional Cost Allocation Principle 1).

[FR Doc. 2016–18826 Filed 8–8–16; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP16–1109–000.

Applicants: Wyoming Interstate Company, L.L.C.

Description: Section 4(d) Rate Filing: Negotiated Rate Non Conforming

Agreement Filing to be effective 8/1/2016.

Filed Date: 7/27/16.

Accession Number: 20160727–5061.

Comments Due: 5 p.m. ET 8/8/16.

Docket Numbers: RP16–1110–000.

Applicants: Equitrans, L.P.

Description: Section 4(d) Rate Filing: Assignment of Mercuria Energy Gas Trading Agreements to Mercuria Energy America to be effective 8/1/2016.

Filed Date: 7/27/16.

Accession Number: 20160727–5078.

Comments Due: 5 p.m. ET 8/8/16.

Docket Numbers: RP16–1111–000.

Applicants: Pine Prairie Energy Center, LLC.

Description: Section 4(d) Rate Filing: Pine Prairie Energy Center, LLC—Proposed Revisions to FERC Gas Tariff to be effective 8/27/2016.

Filed Date: 7/27/16.

Accession Number: 20160727–5110.

Comments Due: 5 p.m. ET 8/8/16.

Docket Numbers: RP16–1112–000.

Applicants: Tallgrass Interstate Gas Transmission, L.

Description: Section 4(d) Rate Filing: Neg Rate 2016/7/28 Ethanols to be effective 8/1/2016.

Filed Date: 7/28/16.

Accession Number: 20160728–5000.

Comments Due: 5 p.m. ET 8/9/16.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP16–1097–001.

Applicants: KO Transmission Company.

Description: Tariff Amendment: KO Transmission Amendment Filing Docket No. RP16–1097 to be effective 9/1/2016.

Filed Date: 7/27/16.

Accession Number: 20160727–5098.

Comments Due: 5 p.m. ET 8/8/16.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 28, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–18804 Filed 8–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2564–006; ER10–2600–006; ER10–2289–006.

Applicants: Tucson Electric Power Company, UNS Electric, Inc., UniSource Energy Development Company.

Description: Supplement to December 31, 2015 Triennial Market Power Update for the Southwest Region of the Fortis, Inc. subsidiaries, et al.

Filed Date: 8/1/16.

Accession Number: 20160801–5130.

Comments Due: 5 p.m. ET 9/30/16.

Docket Numbers: ER10–2641–026; ER10–2663–026; ER10–2881–026; ER10–2882–027; ER10–2883–026; ER10–2884–026; ER10–2885–026; ER10–2886–027; ER13–1101–022; ER13–1541–021; ER14–661–013; ER14–787–015; ER15–54–007; ER15–55–007; ER15–647–004; ER15–1475–008; ER15–2191–003; ER15–2453–003; ER15–2593–007; ER16–452–007; ER16–705–005; ER16–706–005; ER16–1154–005.

Applicants: Oleander Power Project, L.P., Southern Company—Florida LLC, Southern Power Company, Alabama Power Company, Georgia Power Company, Mississippi Power Company, Gulf Power Company, Southern Turner Cimarron I, LLC, Spectrum Nevada Solar, LLC, Campo Verde Solar, LLC, SG2 Imperial Valley LLC, Macho Springs Solar, LLC, Lost Hills Solar, LLC, Blackwell Solar, LLC, Kay Wind, LLC, North Star Solar, LLC, Grant Wind, LLC, Passadumkeag Windpark, LLC, Desert Stateline LLC, RE Tranquillity LLC, RE Garland A LLC, RE Garland LLC, Parrey, LLC.

Description: Notification of Non-Material of Change in Status of Oleander Power Project, Limited Partnership, *et al.*

Filed Date: 8/1/16.

Accession Number: 20160801–5157.

Comments Due: 5 p.m. ET 8/22/16.

Docket Numbers: ER16–2327–000.

Applicants: California Independent System Operator Corporation.

Description: Compliance filing: 2016–07–29 Petition Limited Waiver BART LSE to be effective N/A.

Filed Date: 7/29/16.

Accession Number: 20160729–5227.

Comments Due: 5 p.m. ET 8/8/16.

Docket Numbers: ER16–2338–000.

Applicants: Emera Energy Services Subsidiary No. 4 LLC.

Description: § 205(d) Rate Filing: Amend Market-Based Rate Tariff to be effective 7/1/2016.

Filed Date: 8/1/16.

Accession Number: 20160801–5072.

Comments Due: 5 p.m. ET 8/22/16.

Docket Numbers: ER16–2339–000.

Applicants: Emera Energy Services Subsidiary No. 5 LLC.

Description: § 205(d) Rate Filing: Amend Market-Based Rate Tariff to be effective 7/1/2016.

Filed Date: 8/1/16.

Accession Number: 20160801–5074.

Comments Due: 5 p.m. ET 8/22/16.

Docket Numbers: ER16–2340–000.

Applicants: Emera Energy Services Subsidiary No. 6 LLC.

Description: § 205(d) Rate Filing: Amend Market-Based Rate Tariff to be effective 7/1/2016.

Filed Date: 8/1/16.

Accession Number: 20160801–5077.

Comments Due: 5 p.m. ET 8/22/16.

Docket Numbers: ER16–2341–000.

Applicants: Emera Energy Services Subsidiary No. 7 LLC.

Description: § 205(d) Rate Filing: Amend Market-Based Rate Tariff to be effective 7/1/2016.

Filed Date: 8/1/16.

Accession Number: 20160801–5083.

Comments Due: 5 p.m. ET 8/22/16.

Docket Numbers: ER16–2342–000.

Applicants: Emera Energy Services Subsidiary No. 8 LLC.

Description: § 205(d) Rate Filing: Amend Market-Based Rate Tariff to be effective 7/1/2016.

Filed Date: 8/1/16.

Accession Number: 20160801–5086.

Comments Due: 5 p.m. ET 8/22/16.

Docket Numbers: ER16–2343–000.

Applicants: Emera Energy Services Subsidiary No. 9 LLC.

Description: § 205(d) Rate Filing: Amend Market-Based Rate Tariff to be effective 7/1/2016.

Filed Date: 8/1/16.

Accession Number: 20160801–5087.

Comments Due: 5 p.m. ET 8/22/16.

Docket Numbers: ER16–2344–000.

Applicants: Emera Energy Services Subsidiary No. 10 LLC.

Description: § 205(d) Rate Filing: Amend Market-Based Rate Tariff to be effective 7/1/2016.

Filed Date: 8/1/16.
Accession Number: 20160801–5088.
Comments Due: 5 p.m. ET 8/22/16.
Docket Numbers: ER16–2345–000.
Applicants: Rumford Power Inc.
Description: § 205(d) Rate Filing: Amend Market-Based Rate Tariff to be effective 7/1/2016.
Filed Date: 8/1/16.
Accession Number: 20160801–5089.
Comments Due: 5 p.m. ET 8/22/16.
Docket Numbers: ER16–2346–000.
Applicants: Tiverton Power LLC.
Description: § 205(d) Rate Filing: Amend Market-Based Rate Tariff to be effective 7/1/2016.
Filed Date: 8/1/16.
Accession Number: 20160801–5090.
Comments Due: 5 p.m. ET 8/22/16.
Docket Numbers: ER16–2347–000.
Applicants: Bridgeport Energy LLC.
Description: § 205(d) Rate Filing: Amend Market-Based Rate Tariffs to be effective 7/1/2016.
Filed Date: 8/1/16.
Accession Number: 20160801–5091.
Comments Due: 5 p.m. ET 8/22/16.
Docket Numbers: ER16–2348–000.
Applicants: Mesquite Solar 3, LLC.
Description: Initial rate filing: Mesquite Solar 3, LLC LGIA Co-Tenancy Agreement to be effective 8/5/2016.
Filed Date: 8/1/16.
Accession Number: 20160801–5110.
Comments Due: 5 p.m. ET 8/22/16.
Docket Numbers: ER16–2349–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Service Agreement No. 4504, Queue Position Z2–081 to be effective 7/1/2016.
Filed Date: 8/1/16.
Accession Number: 20160801–5111.
Comments Due: 5 p.m. ET 8/22/16.
Docket Numbers: ER16–2350–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: 2nd Quarter 2016 Update to OA and RAA Member Lists to be effective 6/30/2016.
Filed Date: 8/1/16.
Accession Number: 20160801–5113.
Comments Due: 5 p.m. ET 8/22/16.
Docket Numbers: ER16–2351–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Rate Schedule No. 217, Exhibit B.KOF to be effective 10/1/2016.
Filed Date: 8/1/16.
Accession Number: 20160801–5116.
Comments Due: 5 p.m. ET 8/22/16.
Docket Numbers: ER16–2352–000.
Applicants: Midcontinent Independent System Operator, Inc., Union Electric Company.
Description: § 205(d) Rate Filing: 2016–08–01_SA 2934 Ameren Missouri-City of Farmington Construction Agreement to be effective 7/7/2016.
Filed Date: 8/1/16.
Accession Number: 20160801–5127.
Comments Due: 5 p.m. ET 8/22/16.
Docket Numbers: ER16–2353–000.
Applicants: Pacific Gas and Electric Company.
Description: Notice of Termination of Small Generator Interconnection Service Agreement No. 316 of Pacific Gas and Electric Company.
Filed Date: 8/1/16.
Accession Number: 20160801–5132.
Comments Due: 5 p.m. ET 8/22/16.
Docket Numbers: ER16–2354–000.
Applicants: PacifiCorp.
Description: Tariff Cancellation: Termination of Georgia-Pacific E&P Agmt ? Troutdale Sub to be effective 10/3/2016.
Filed Date: 8/1/16.
Accession Number: 20160801–5158.
Comments Due: 5 p.m. ET 8/22/16.
Docket Numbers: ER16–2355–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2016–08–01_RSG Exemptions Compliance Filing to be effective 8/31/2010.
Filed Date: 8/1/16.
Accession Number: 20160801–5179.
Comments Due: 5 p.m. ET 8/22/16.
Docket Numbers: ER16–2356–000.
Applicants: SEP II, LLC.
Description: Initial rate filing: SEP II, LLC Certificate of Concurrence to LGIA Co-Tenancy Agreement to be effective 8/5/2016.
Filed Date: 8/1/16.
Accession Number: 20160801–5180.
Comments Due: 5 p.m. ET 8/22/16.
Docket Numbers: ER16–2357–000.
Applicants: Emera Energy Services, Inc.
Description: § 205(d) Rate Filing: Amend Market-Based Rate Tariff to be effective 7/1/2016.
Filed Date: 8/1/16.
Accession Number: 20160801–5189.
Comments Due: 5 p.m. ET 8/22/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–18799 Filed 8–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Staff Notice of Alleged Violations

Take notice that in a preliminary, non-public investigation pursuant to 18 CFR part 1b, the staff of the Office of Enforcement of the Federal Energy Regulatory Commission (Commission) has preliminarily determined that National Energy & Trade, L.P. (National Energy) violated the Commission's Prohibition of Natural Gas Market Manipulation, 18 CFR 1c.1 (2016).

Staff alleges that National Energy violated 18 CFR 1c.1 by fraudulently trading physical basis at Texas Eastern M3 (Tetco M3) during the January 2012 bidweek to increase the value of its financial basis position. Specifically, staff alleges that National Energy accomplished this fraud by selling physical basis at Tetco M3 at arbitrarily low prices early in the morning to benefit a large short financial basis position acquired before bidweek, a large part of which it repurchased after making its physical basis sales. Staff also alleges that National Energy violated 18 CFR 1c.1 by fraudulently trading physical basis at Henry Hub during the April 2014 bidweek to increase the value of its financial exposure. Specifically, staff alleges that National Energy accomplished this fraud by trading physical basis after the close of the NYMEX solely to benefit National Energy's exposure to the Henry Hub Inside FERC index.

This Notice does not confer a right on third parties to intervene in the investigation or any other right with respect to the investigation.[1]

Dated: August 3, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–18828 Filed 8–8–16; 8:45 am]

BILLING CODE 6717–01–P

[1] Enforcement of Statutes, Regulations, and Orders, 129 FERC ¶ 61,247 (2009).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–2297–000]

Osborn Wind Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding Osborn Wind Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 22, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–18803 Filed 8–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Staff Notice of Alleged Violations

Take notice that in a preliminary, non-public investigation pursuant to 18 CFR part 1b, the staff of the Office of Enforcement of the Federal Energy Regulatory Commission (Commission) has preliminarily determined that David Silva (Silva) violated the Commission's Prohibition of Natural Gas Market Manipulation, 18 CFR 1c.1 (2016).

Staff alleges that Silva violated 18 CFR 1c.1 by fraudulently trading physical basis at Texas Eastern M3 (Tetco M3) during the January 2012 bidweek to increase the value of his financial basis position. Specifically, staff alleges that Silva accomplished this fraud by selling physical basis at Tetco M3 at arbitrarily low prices early in the morning to benefit a large short financial basis position acquired before bidweek, a large part of which he repurchased after making his physical basis sales.

This Notice does not confer a right on third parties to intervene in the investigation or any other right with respect to the investigation.[1]

Dated: August 3, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–18830 Filed 8–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1597–006; ER10–1620–006; ER10–1624–006; ER10–1625–006; ER10–1626–006.

Applicants: Kiowa Power Partners, LLC, Tenaska Alabama II Partners, L.P., Tenaska Gateway Partners, Ltd., Tenaska Georgia Partners, L.P., Tenaska Virginia Partners, L.P.

Description: Notification of Change in Status of the Tenaska MBR Sellers, et al.

Filed Date: 7/29/16.

Accession Number: 20160729–5241.

Comments Due: 5 p.m. ET 8/19/16.

Docket Numbers: ER10–2641–025; ER10–2663–025; ER10–2881–025; ER10–2882–026; ER10–2883–025; ER10–2884–025; ER10–2885–025; ER10–2886–026; ER13–1101–021; ER13–1541–020; ER14–661–012; ER14–787–014; ER15–54–006; ER15–55–006; ER15–647–003; ER15–1475–007; ER15–2191–002; ER15–2453–002; ER15–2593–006; ER16–452–006; ER16–705–004; ER16–706–004; ER16–1154–004.

Applicants: Oleander Power Project, LP, Southern Company-Florida LLC, Alabama Power Company, Southern Power Company, Georgia Power Company, Mississippi Power Company, Gulf Power Company, Southern Turner Cimarron I, LLC, Spectrum Nevada Solar, LLC, Campo Verde Solar, LLC, SG2 Imperial Valley LLC, Macho Springs Solar, LLC, Lost Hills Solar, LLC, Blackwell Solar, LLC, Kay Wind, LLC, North Star Solar, LLC, Grant Wind, LLC, Passadumkeag Windpark, LLC, Desert Stateline LLC, RE Garland LLC, RE Tranquillity LLC, RE Garland A LLC, Parrey, LLC.

Description: Notification of Non-Material of Change in Status of Oleander Power Project, Limited Partnership, et al.

Filed Date: 7/29/16.

Accession Number: 20160729–5238.

Comments Due: 5 p.m. ET 8/19/16.

Docket Numbers: ER10–2759–005; ER10–2732–011; ER10–2733–011; ER10–2734–011; ER10–2736–011; ER10–2737–011; ER10–2741–011; ER10–2749–011; ER10–2752–011; ER12–2492–007; ER12–2493–007; ER12–2494–007; ER12–2495–007; ER12–2496–007; ER14–264–002; ER10–2631–005; ER10–1437–004; ER13–815–003.

Applicants: Bridgeport Energy LLC, Emera Energy Services Inc., Emera Energy U.S. Subsidiary No. 1, Inc., Emera Energy U.S. Subsidiary No. 2, Inc., Emera Energy Services Subsidiary No. 1 LLC, Emera Energy Services Subsidiary No. 2 LLC, Emera Energy Services Subsidiary No. 3 LLC, Emera Energy Services Subsidiary No. 4 LLC, Emera Energy Services Subsidiary No. 5 LLC, Emera Energy Services Subsidiary No. 6 LLC, Emera Energy Services Subsidiary No. 7 LLC, Emera Energy Services Subsidiary No. 8 LLC, Emera Energy Services Subsidiary No. 9 LLC, Emera Energy Services Subsidiary No.

[1] Enforcement of Statutes, Regulations, and Orders, 129 FERC ¶ 61,247 (2009).

10 LLC, Emera Maine, Rumford Power Inc., Tampa Electric Company, Tiverton Power LLC.

Description: Notice of Change in Status of the Emera Entities, et al.

Filed Date: 8/1/16.

Accession Number: 20160801–5061.

Comments Due: 5 p.m. ET 8/22/16.

Docket Numbers: ER11–2855–021; ER11–2856–021; ER11–2857–021; ER10–2488–013; ER10–2722–006; ER10–2787–005; ER12–2037–007; ER10–2532–007; ER13–343–006; ER13–342–011.

Applicants: Avenal Park LLC, Sand Drag LLC, Sun City Project LLC, Oasis Power Partners, LLC, Eurus Combine Hills I LLC, Eurus Combine Hills II LLC, Crescent Ridge LLC, Spearville 3, LLC, CPV Maryland, LLC, CPV Shore, LLC.

Description: Notice of Non-Material Change in Status of the Eurus MBR Affiliates, et al.

Filed Date: 7/29/16.

Accession Number: 20160729–5274.

Comments Due: 5 p.m. ET 8/19/16.

Docket Numbers: ER16–2328–000.

Applicants: New England Power Company.

Description: § 205(d) Rate Filing: New England Power—Facilities Use Agreement with Deepwater Block Island Wind to be effective 7/28/2016.

Filed Date: 7/29/16.

Accession Number: 20160729–5228.

Comments Due: 5 p.m. ET 8/19/16.

Docket Numbers: ER16–2329–000.

Applicants: PacifiCorp.

Description: Tariff Cancellation: Termination of Clatskanie PUD E&P Agreement ? Troutdale Sub to be effective 10/3/2016.

Filed Date: 7/29/16.

Accession Number: 20160729–5230.

Comments Due: 5 p.m. ET 8/19/16.

Docket Numbers: ER16–2330–000.

Applicants: Southwest Power Pool, Inc.

Description: Petition of Southwest Power Pool, Inc. for Tariff Waiver.

Filed Date: 7/29/16.

Accession Number: 20160729–5284.

Comments Due: 5 p.m. ET 8/19/16.

Docket Numbers: ER16–2332–000.

Applicants: Emera Maine.

Description: § 205(d) Rate Filing: Amend Market-Based Rate Tariff to be effective 7/1/2016.

Filed Date: 8/1/16.

Accession Number: 20160801–5060.

Comments Due: 5 p.m. ET 8/22/16.

Docket Numbers: ER16–2333–000.

Applicants: Emera Energy U.S. Subsidiary No. 1, Inc.

Description: § 205(d) Rate Filing: Amend Market-Based Rate Tariffs to be effective 7/1/2016.

Filed Date: 8/1/16.

Accession Number: 20160801–5062.

Comments Due: 5 p.m. ET 8/22/16.

Docket Numbers: ER16–2334–000.

Applicants: Emera Energy U.S. Subsidiary No. 2, Inc.

Description: § 205(d) Rate Filing: Amend Market-Based Rate Tariff to be effective 7/1/2016.

Filed Date: 8/1/16.

Accession Number: 20160801–5063.

Comments Due: 5 p.m. ET 8/22/16.

Docket Numbers: ER16–2335–000.

Applicants: Emera Energy Services Subsidiary No. 1 LLC.

Description: § 205(d) Rate Filing: Amend Market-Based Rate Tariff to be effective 7/1/2016.

Filed Date: 8/1/16.

Accession Number: 20160801–5066.

Comments Due: 5 p.m. ET 8/22/16.

Docket Numbers: ER16–2336–000.

Applicants: Emera Energy Services Subsidiary No. 2 LLC.

Description: § 205(d) Rate Filing: Amend Market-Based Rate Tariff to be effective 7/1/2016.

Filed Date: 8/1/16.

Accession Number: 20160801–5067.

Comments Due: 5 p.m. ET 8/22/16.

Docket Numbers: ER16–2337–000.

Applicants: Emera Energy Services Subsidiary No. 3 LLC.

Description: § 205(d) Rate Filing: Amend Market-Based Rate Tariff to be effective 7/1/2016.

Filed Date: 8/1/16.

Accession Number: 20160801–5069.

Comments Due: 5 p.m. ET 8/22/16.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES16–49–000.

Applicants: New England Power Company.

Description: Application of New England Power Company under Section 204 of the Federal Power Act for Authorization to Issue Securities.

Filed Date: 7/29/16.

Accession Number: 20160729–5275.

Comments Due: 5 p.m. ET 8/19/16.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH16–10–000.

Applicants: Southern Company Gas.

Description: Southern Company Gas submits FERC 65–A Exemption Notification.

Filed Date: 7/29/16.

Accession Number: 20160729–5240.

Comments Due: 5 p.m. ET 8/19/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–18798 Filed 8–8–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–9950–45–OAR]

California State Motor Vehicle Pollution Control Standards; Amendments to On-Highway Heavy-Duty Vehicle In-Use Compliance Program, Amendments to 2007 and Subsequent Model Year On-Highway Heavy-Duty Engines and Vehicles, and Amendments to Truck Requirements; Request for Waiver of Preemption; Opportunity for Public Hearing and Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearing and comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted a series of amendments to its on-highway heavy-duty vehicle and engine regulations. The amendments to CARB's in-use compliance program align CARB's program with EPA's program in terms of measurement allowances during on-road testing (In-Use Amendments). The amendments to CARB's 2007 and subsequent model year (MY) regulation (2007 Amendments) are minor technical amendments regarding mathematical expression of emission results and certain compliance flexibilities. The amendments to CARB's truck idling requirements (Truck Idling Amendments) clarify that certain vehicles are exempt from the new vehicle requirements. By letter dated January 27, 2016, CARB submitted a

request that EPA grant a full waiver of preemption under section 209(b) of the Clean Air Act (CAA), 42 U.S.C. 7543(b) for the In-Use Amendments. CARB separately seeks EPA's confirmation that the 2007 Amendments and the Truck Idling Amendments are within the scope of prior EPA waiver decisions. This notice announces that EPA has scheduled a public hearing concerning California's request and that EPA is accepting written comment on the request.

DATES: EPA has tentatively scheduled a public hearing concerning CARB's request on September 28, 2016, at 10 a.m. EPA will hold a hearing only if any party notifies EPA by September 21, 2016 to express interest in presenting the Agency with oral testimony. Parties wishing to present oral testimony at the public hearing should provide written notice to David Dickinson at the email address noted below. If EPA receives a request for a public hearing, that hearing will be held at the William Jefferson Clinton Building (North), Room 5528 at 1200 Pennsylvania Ave. NW., Washington, DC 20460. If EPA does not receive a request for a public hearing, then EPA will not hold a hearing, and instead will consider CARB's request based on written submissions to the docket. Any party may submit written comments until November 1, 2016.

Any person who wishes to know whether a hearing will be held may call David Dickinson at (202) 343–9256 on or after September 21, 2016.

ADDRESSES: EPA will make available for in person inspection, at the Air and Radiation Docket and Information Center, written comments received from interested parties, in addition to any testimony given at the public hearing. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1743. The reference number for this docket is EPA–HQ–OAR–2016–0017.

EPA will make available an electronic copy of this Notice on the Office of Transportation and Air Quality's (OTAQ's) homepage (*http://www.epa.gov/otaq/*). Users can find this document by accessing the OTAQ homepage and looking at the path entitled "Regulations." This service is free of charge, except any cost you already incur for Internet connectivity. Users can also get the official **Federal Register** version of the Notice on the day of publication on the primary Web site: (*http://www.epa.gov/docs/fedrgstr/EPA-AIR/*).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

FOR FURTHER INFORMATION CONTACT: David Dickinson (6405J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Telephone: (202) 343–9256, Fax: (202) 343–2804, email address: *Dickinson.David@EPA.GOV*.

For Obtaining and Submitting Electronic Copies of Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2016–0017, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: dickinson.david@epa.gov*
- *Fax:* (202) 343–2804.
- *Mail:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Ave. NW., Room B108, Mail Code 6102T, Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2016–0017. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, EPA/DC, EPA West, Room B102, 1301 Constitution Ave. NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Instructions: Direct your comments to Docket ID No EPA–HQ–OAR–2016–0017.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email.

The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy.

SUPPLEMENTARY INFORMATION:

(A) CARB's Waiver Request and Within-the-Scope Request

CARB's January 27, 2016, letter to the Administrator presents EPA with CARB's series of amendments related to the control of emissions from California on-road medium- and heavy-duty engines and vehicles. The In-Use Amendments include amendments adopted by CARB in 2011 that allow a measurement allowance of 0.006 grams per brake horsepower-hour (g/bhp-hr) when using portable emission measurement systems (PEMS) for on-road in-use testing of heavy-duty vehicles. The 2007 Amendments are minor technical amendments regarding mathematical expression of emission results and certain compliance flexibilities. These amendments specify the NOx emission standards to the correct number of significant digits (*e.g.* 0.2 g/bhp-hr is now expressed as 0.20 g/bhp-hr for NOx). The 2007 Amendments also make corrections to the formaldehyde standards for medium-duty diesel vehicles, harmonize labeling requirements with EPA's requirements, maintain consistency with deterioration factors between CARB and EPA, and provide manufacturers with certain compliance flexibilities for the 2007 through 2009 model years. The Truck Idling Amendments clarify that new

engine provisions do not apply to armored cars and workover rigs.[1]

(B) Scope of Preemption and Criteria for a Waiver Under the Clean Air Act

Section 209(a) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7543(a), provides:

> No state or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No state shall require certification, inspection or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

Section 209(b) of the Act requires the Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of section 209(a) for any state that has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the state determines that the state standards will be, in the aggregate, at least as protective of public health and welfare as applicable federal standards. California is the only state that is qualified to seek and receive a waiver under section 209(b). EPA must grant a waiver unless the Administrator finds that (A) the determination of the state is arbitrary and capricious, (B) the state does not need the state standards to meet compelling and extraordinary conditions, or (C) the state standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act. Previous decisions granting waivers of federal preemption for motor vehicles have maintained that state standards are inconsistent with section 202(a) if there is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time period or if the federal and state test procedures impose inconsistent certification procedures.[2]

If California amends regulations that were previously granted a waiver, EPA can confirm that the amended regulations are within the scope of the previously granted waiver. Such within-the-scope amendments are permissible without a full waiver review if three conditions are met. First, the amended regulations must not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as applicable federal standards. Second, the amended regulations must not affect consistency with section 202(a) of the Act. Third, the amended regulations must not raise any "new issues" affecting EPA's prior waivers.

(C) Request for Comment

First, EPA requests comment on whether the 2007 Amendments and the Truck Idling Amendments, each individually assessed, should be considered under the within-the-scope analysis or whether they should be considered under the full waiver criteria. Specifically, we request comment on whether the 2007 Amendments and the Truck Idling Amendments (1) undermine California's previous determination that its standards, in the aggregate, are at least as protective of public health and welfare as comparable Federal standards, (2) affect the consistency of California's requirements with section 202(a) of the Act, and (3) raise any other "new issue" affecting EPA's previous waiver or authorization determinations.

For the In-Use Amendments and to the extent commenters believe the 2007 Amendments or the Truck Idling Amendments should be considered under the full waiver criteria, EPA invites comment under the following three criteria: Whether (a) California's determination that its motor vehicle emission standards are, in the aggregate, at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) California needs such standards to meet compelling and extraordinary conditions, and (c) California's standards and accompanying enforcement procedures are consistent with section 202(a) of the Clean Air Act.

Procedures for Public Participation

The Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. EPA will keep the record open until November 1, 2016. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record of the public hearing, relevant written submissions, and other information that she deems pertinent.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest possible extent and label it as "Confidential Business Information" (CBI). If a person making comments wants EPA to base its decision in part on a submission labeled CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted for the public docket. To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: August 4, 2016.

Christopher Grundler, Director,

Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2016–18897 Filed 8–8–16; 8:45 am]

BILLING CODE 6560–50–P

[1] A further description of the CARB amendments can be found in CARB's Waiver Support document in docket EPA–HQ–OAR–2016–0017.

[2] To be consistent, the California certification procedures need not be identical to the federal certification procedures. California procedures would be inconsistent, however, if manufacturers would be unable to meet the state and the federal requirements with the same test vehicle in the course of the same test. See, *e.g.*, 43 FR 32182 (July 25, 1978).

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–9950–44–OAR]

California State Motor Vehicle Pollution Control Standards; Greenhouse Gas Emissions From 2014 and Subsequent Model Year Medium- and Heavy-Duty Engines and Vehicles; Request for Waiver of Preemption; Opportunity for Public Hearing and Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearing and comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted a greenhouse gas emission regulation for new 2014 and subsequent model year on-road medium-and heavy-duty engines and vehicles (California Phase 1 GHG Regulation). This regulation aligns California's GHG emission standards and test procedures with the federal GHG emission standards and test procedures that EPA adopted in 2011. By letter dated January 29, 2016, CARB submitted a request that

EPA grant a waiver of preemption under section 209(b) of the Clean Air Act (CAA), 42 U.S.C. 7543(b) for the California Phase 1 GHG Regulation. This notice announces that EPA has scheduled a public hearing concerning California's request and that EPA is accepting written comment on the request.

DATES: EPA has tentatively scheduled a public hearing concerning CARB's request on September 28, 2016, at 10 a.m. EPA will hold a hearing only if any party notifies EPA by September 21, 2016 to express interest in presenting the Agency with oral testimony. Parties wishing to present oral testimony at the public hearing should provide written notice to David Dickinson at the email address noted below. If EPA receives a request for a public hearing, that hearing will be held at the William Jefferson Clinton Building (North), Room 5528 at 1200 Pennsylvania Ave, NW., Washington, DC 20460. If EPA does not receive a request for a public hearing, then EPA will not hold a hearing, and instead will consider CARB's request based on written submissions to the docket. Any party may submit written comments until November 1, 2016.

Any person who wishes to know whether a hearing will be held may call David Dickinson at (202) 343–9256 on or after September 21, 2016.

ADDRESSES: EPA will make available for in person inspection, at the Air and Radiation Docket and Information Center, written comments received from interested parties, in addition to any testimony given at the public hearing. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1743. The reference number for this docket is EPA–HQ–OAR–2016–0179.

EPA will make available an electronic copy of this Notice on the Office of Transportation and Air Quality's (OTAQ's) homepage (*http://www.epa.gov/otaq/*). Users can find this document by accessing the OTAQ homepage and looking at the path entitled "Regulations." This service is free of charge, except any cost you already incur for Internet connectivity. Users can also get the official **Federal Register** version of the Notice on the day of publication on the primary Web site: (*http://www.epa.gov/docs/fedrgstr/EP-AIR/*).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

FOR FURTHER INFORMATION CONTACT: David Dickinson (6405J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Telephone: (202) 343–9256, Fax: (202) 343–2804, email address: *Dickinson.David@EPA.GOV*.

For Obtaining and Submitting Electronic Copies of Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2016–0179, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: dickinson.david@epa.gov.*
- *Fax:* (202) 343–2804.
- *Mail:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Ave. NW., Room B108, Mail Code 6102T, Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2013–0491. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, EPA/DC, EPA West, Room B102, 1301 Constitution Ave. NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No EPA–HQ–OAR–2016–0179.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email.

The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy.

SUPPLEMENTARY INFORMATION:

(A) CARB's Waiver Request for the California Phase 1 GHG Regulation

CARB's January 29, 2016, letter to the Administrator presents EPA with CARB's requirements related to the control of greenhouse gas emissions from 2014 and subsequent MY California on-road medium- and heavy-duty engines and vehicles. The regulation establishes requirements applicable to new motor vehicles with a gross vehicle weight rating (GVWR) exceeding 8,500 pounds and engines that power such motor vehicles, except for medium-duty passenger vehicles (MDPVs) that are subject to California's Low Emission Vehicle Program.[1] California's Phase 1 regulation is supplemental to CARB's existing Tractor-Trailer GHG regulation that was initially adopted by the CARB Board in 2008 and subsequently amended in 2010 and 2012.[2] CARB's Tractor-Trailer

[1] The California Phase 1 GHG regulation is comprised of new title 17, California Code of Regulations (CCR) sections 95660 through 95664, and amendments to title 13, CCR, sections 1900, 1958.6, 2036, 2037, 2112, 2140, and 2147. These regulations apply to all motor vehicles with a GVWR greater than 8,500 pounds. An exception to these regulations are MDPVs which are primarily designed for the transport of passengers. (MDPVs are not subject to this waiver). A definition of MDPVs can be found at title 13, CCR, section 1900(b)(15). California uses the same definition of light-duty vehicles (which includes a subcategory for MDPVs) as EPA.

[2] EPA granted California a waiver for the Tractor-Trailer GHG regulation in 2014. 79 FR 46256 (August 7, 2014). A petition was subsequently filed in the United States Court of Appeals for the District of Columbia Circuit that requested the court

Continued

GHG regulation includes the regulation of certain trailers associated with heavy-duty vehicles and engines. CARB amended the Tractor-Trailer GHG regulation in conjunction with its adoption of the Phase 1 GHG regulation (which only addresses vehicles and engines) to ensure that California's GHG requirements for new medium and heavy-duty engines and vehicles are consistent with the corresponding requirements of EPA's Phase 1 GHG regulation (that addresses engines and vehicles).

(B) Scope of Preemption and Criteria for a Waiver Under the Clean Air Act

Section 209(a) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7543(a), provides:

> No state or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No state shall require certification, inspection or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

Section 209(b) of the Act requires the Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of section 209(a) for any state that has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the state determines that the state standards will be, in the aggregate, at least as protective of public health and welfare as applicable federal standards. California is the only state that is qualified to seek and receive a waiver under section 209(b). EPA must grant a waiver unless the Administrator finds that (A) the determination of the state is arbitrary and capricious, (B) the state does not need the state standards to meet compelling and extraordinary conditions, or (C) the state standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act. Previous decisions granting waivers of federal preemption for motor vehicles have maintained that state standards are inconsistent with section 202(a) if there is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time period or if the federal and state test procedures impose inconsistent certification procedures.[3]

(C) Request for Comment

EPA invites comment on CARB's request for a waiver for the California Phase 1 GHG regulation under the following three criteria: whether (a) California's determination that its motor vehicle emission standards are, in the aggregate, at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) California needs such standards to meet compelling and extraordinary conditions, and (c) California's standards and accompanying enforcement procedures are consistent with section 202(a) of the Clean Air Act.

Procedures for Public Participation

The Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. EPA will keep the record open until November 1, 2016. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record of the public hearing, relevant written submissions, and other information that she deems pertinent.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest possible extent and label it as "Confidential Business Information" (CBI). If a person making comments wants EPA to base its decision in part on a submission labeled CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted for the public docket. To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: August 3, 2016.

Christopher Grundler,

Director, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2016–18868 Filed 8–8–16; 8:45 am]

BILLING CODE 6560–50–P

to review EPA's issuance of the waiver. The court dismissed the petition on November 25, 2015.

[3] To be consistent, the California certification procedures need not be identical to the federal certification procedures. California procedures would be inconsistent, however, if manufacturers would be unable to meet the state and the federal requirements with the same test vehicle in the course of the same test. See, *e.g.*, 43 FR 32182 (July 25, 1978).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9950–42–OA]

Request for Nominations for a Science Advisory Board Panel To Review Risk and Technology Review Screening Methods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office requests public nominations of scientific experts to form a Panel to review the draft EPA report entitled "Screening Methodologies to Support Risk and Technology Reviews (RTR)." This draft report describes newly developed screening methods designed to assess the risk to public health and the environment that would remain after stationary sources of hazardous air pollutants come into compliance with the EPA's Maximum Available Control Technologies (MACT) standards.

DATES: Nominations should be submitted by August 30, 2016 per the instructions below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Notice and Request for Nominations may contact the Designated Federal Officer. Nominators unable to submit nominations electronically as described below may contact the Designated Federal Officer for assistance. General information concerning the EPA SAB can be found at the EPA SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: The SAB (42 U.S.C. 4365) is a chartered Federal Advisory Committee that provides independent scientific and technical peer review, advice, and recommendations to the EPA Administrator on the technical basis for EPA actions. As a Federal Advisory Committee, the SAB conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations. The SAB RTR Methods Review Panel will provide advice through the chartered SAB on scientific and technical issues related to assessing risks to public health and the

environment from hazardous air pollutants. The SAB and this Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

EPA's Office of Air and Radiation (OAR) has prepared a draft report entitled "Screening Methodologies to Support Risk and Technology Reviews (RTR): A Case Study Analysis." The Clean Air Act (CAA) establishes a two-stage regulatory process for addressing emissions of hazardous air pollutants (HAPs) from stationary sources. In the first stage, the CAA requires the EPA to develop technology-based standards, known as Maximum Achievable Control Technology (MACT) standards, for categories of industrial sources. In the second stage, the EPA must review each MACT standard at least every eight years and revise them as necessary, taking into account developments in practices, processes and control technologies. EPA must also conduct an assessment of the health and environmental risks that remain after stationary sources come into compliance with the MACT standards. Periodically, the SAB is asked to review the methods that OAR uses to estimate risks as these methods evolve or as new methods are developed. Thus, OAR has requested the SAB to review EPA's draft report that describes newly enhanced screening methods designed to estimate the potential risks to public health and the environment that would remain after stationary sources of HAPs come into compliance with EPA's MACT standards. These include screening methods to estimate the potential for multi-pathway risks (*e.g.,* ingestion, inhalation) from persistent and bioaccumulative HAPs, screening methods to estimate potential environmental risks, and recent enhancements to the EPA's inhalation risk assessment methodology. The SAB Staff Office is forming an expert panel, the SAB RTR Methods Review Panel, under the auspices of the Chartered SAB to conduct this review.

Technical Contact for EPA's draft report: For information concerning the draft report "Screening Methodologies to Support Risk and Technology Reviews (RTR): A Case Study Analysis" please contact Dr. Michael Stewart by email at *stewart.michael@epa.gov* or phone (919) 541–7524.

Request for Nominations: The SAB Staff Office is seeking nominations of nationally and internationally recognized scientists with demonstrated expertise in the following disciplines: Human health risk assessment, ecological risk assessment, exposure assessment, toxicology, ecology, aquatic toxicology, air toxics, and dispersion modeling. Additional information about this advisory activity is available on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/RTR%20Screening%20Methods%20Review?OpenDocument.* Questions regarding this advisory activity should be directed to Dr. Suhair Shallal, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 564–2057, by fax at (202) 565–2098, or via email at *shallal.suhair@epa.gov.*

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals in the areas of expertise described above for possible service on the SAB RTR Methods Review Panel identified in this notice. Individuals may self-nominate. Nominations should be submitted in electronic format (preferred over hard copy) following the instructions for "Nominating Experts to Advisory Panels and Ad Hoc Committees Being Formed," provided on the SAB Web site (see the "Nomination of Experts" link under "Current Activities" at *http://www.epa.gov/sab*). To receive full consideration, nominations should include all of the information requested below.

EPA's SAB Staff Office requests contact information about the person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's resume or curriculum vitae; sources of recent grant and/or contract support; and a biographical sketch of the nominee indicating current position, educational background, research activities, and recent service on other national advisory committees or national professional organizations.

Persons having questions about the nomination procedures, or who are unable to submit nominations through the SAB Web site, should contact Dr. Shallal as indicated above in this notice. Nominations should be submitted in time to arrive no later than August 30, 2016. EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

The EPA SAB Staff Office will acknowledge receipt of nominations. The names and biosketches of qualified nominees identified by respondents to this **Federal Register** notice, and additional experts identified by the SAB Staff Office, will be posted in a List of Candidates for the panel on the SAB Web site at *http://www.epa.gov/sab.* Public comments on the List of Candidates will be accepted for 21 days. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

For the EPA SAB Staff Office a balanced review panel includes candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. In forming the expert panel, the SAB Staff Office will consider public comments on the Lists of Candidates, information provided by the candidates themselves, and background information independently gathered by the SAB Staff Office. Selection criteria to be used for panel membership include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a loss of impartiality; (e) skills working in committees, subcommittees and advisory panels; and, (f) for the panel as a whole, diversity of expertise and scientific points of view.

The SAB Staff Office's evaluation of an absence of financial conflicts of interest will include a review of the "Confidential Financial Disclosure Form for Environmental Protection Agency Special Government Employees" (EPA Form 3110–48). This confidential form allows government officials to determine whether there is a statutory conflict between a person's public responsibilities (which include membership on an EPA federal advisory committee) and private interests and activities, or the appearance of a loss of impartiality, as defined by federal regulation. The form may be viewed and downloaded from the following URL address *http://yosemite.epa.gov/sab/sabproduct.nsf/Web/ethics?OpenDocument.*

The approved policy under which the EPA SAB Office selects members for subcommittees and review panels is described in the following document: *Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board* (EPA–SAB–EC–02–010), which is posted on the SAB Web site at *https://yosemite.epa.gov/sab/sabproduct.nsf/WebFiles/OverviewPanelForm/$File/ec02010.pdf.*

Dated: August 3, 2016.

Thomas H. Brennan,

Deputy Director, Science Advisory Board Staff Office.

[FR Doc. 2016–18881 Filed 8–8–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2015–0224; FRL–9950–43–OAR]

California State Nonroad Engine Pollution Control Standards; Evaporative Emission Standards and Test Procedures for Off-Highway Recreational Vehicles (OHRVs); Request for Authorization; Opportunity for Public Hearing and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearing and comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted amendments to its off-highway recreational vehicles (ORVR) regulation that establish new evaporative emission standards and associated test procedures for 2018 and subsequent model year OHRVs (OHRV Evaporative Emission Amendments). By letter dated February 26, 2016, CARB asked that EPA authorize these amendments pursuant to section 209(e) of the Clean Air Act. This notice announces that EPA has tentatively scheduled a public hearing to consider California's authorization request and that EPA is now accepting written comment on the request.

DATES: EPA has tentatively scheduled a public hearing concerning CARB's request on September 28, 2016. at 10 a.m. EPA will hold a hearing only if any party notifies EPA by September 21, 2016 to express interest in presenting the Agency with oral testimony. Parties wishing to present oral testimony at the public hearing should provide written notice to David Dickinson at the email address noted below. If EPA receives a request for a public hearing, that hearing will be held at the William Jefferson Clinton Building (North), Room 5528 at 1200 Pennsylvania Ave. NW., Washington, DC 20460. If EPA does not receive a request for a public hearing, then EPA will not hold a hearing, and instead will consider CARB's request based on written submissions to the docket. Any party may submit written comments until November 1, 2016.

Any person who wishes to know whether a hearing will be held may call David Dickinson at (202) 343–9256 on or after September 21, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2016–0181, by one of the following methods:

- *Online at: http://www.regulations.gov:* Follow the Online Instructions for Submitting Comments.
- *Email: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Air and Radiation Docket, Docket ID No. EPA–HQ–OAR–2016–0181, U.S. Environmental Protection Agency, Mail code: 6102T, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Online Instructions for Submitting Comments: Direct your comments to Docket ID No. EPA–HQ–OAR–2016–0181. EPA's policy is that all comments we receive will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov*, your email address will automatically be captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

EPA will make available for public inspection materials submitted by CARB, written comments received from any interested parties, and any testimony given at the public hearing. Materials relevant to this proceeding are contained in the Air and Radiation Docket and Information Center, maintained in Docket ID No. EPA–HQ–OAR–2016–0181. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, located at 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open to the public on all federal government work days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566–1744. The Air and Radiation Docket and Information Center's Web site is *http://www.epa.gov/oar/docket.html.* The electronic mail (email) address for the Air and Radiation Docket is: *a-and-r-Docket@epa.gov,* the telephone number is (202) 566–1742, and the fax number is (202) 566–9744. An electronic version of the public docket is available through the federal government's electronic public docket and comment system. You may access EPA dockets at *http://www.regulations.gov.* After opening the *http://www.regulations.gov* Web site, enter, in the ''Enter Keyword or ID'' fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information (''CBI'') or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: David Dickinson (6405J), Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Telephone: (202) 343–9256. Fax: (202) 343–2804. Email: *dickinson.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

(A) CARB's Authorization Request for Its OHRV Evaporative Emission Amendments

The California OHRV category encompasses a wide variety of vehicles, including off-road motorcycles, all-terrain vehicles (ATVs), off-road sport and utility vehicles, sand cars, and golf carts. CARB's OHRV Evaporative

Emission Amendments establish a new test procedure and evaporative emission standard of 1.0 gram per day (g/day) of total organic gas (TOG) for a 3-day diurnal period, which may be achieved utilizing the available evaporative emissions technology currently used in the on-road sector.

By letter dated February 26, 2016, CARB submitted a request to EPA pursuant to section 209(e) of the Clean Air Act (CAA or the Act) for authorization for the OHRV Evaporative Emission Amendments.

(B) Clean Air Act Nonroad Engine and Vehicle Authorizations

Section 209(e)(1) of the CAA prohibits states and local governments from adopting or attempting to enforce any standard or requirement relating to the control of emissions from certain types of new nonroad vehicles or engines. The Act also preempts states from adopting and enforcing standards and other requirements related to the control of emissions from other types of new nonroad vehicles or engines as well as non-new nonroad engines or vehicles. Section 209(e)(2), however, requires the Administrator, after notice and opportunity for public hearing, to authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such preempted vehicles or engines if California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. However, EPA shall not grant such authorization if it finds that (1) the determination of California is arbitrary and capricious; (2) California does not need such California standards to meet compelling and extraordinary conditions; or (3) California standards and accompanying enforcement procedures are not consistent with [CAA section 209]. In addition, other states with air quality attainment plans may adopt and enforce such regulations if the standards and the implementation and enforcement procedures are identical to California's standards. On July 20, 1994, EPA promulgated a rule that sets forth, among other things, regulations providing the criteria, as found in section 209(e)(2), which EPA must consider before granting any California authorization request for new nonroad engine or vehicle emission standards.[1] EPA revised these regulations in 1997.[2] As stated in the preamble to the 1994 rule, EPA has historically interpreted the section 209(e)(2)(A)(iii) "consistency" inquiry to require, at minimum, that California standards and enforcement procedures be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C) (as EPA has interpreted that subsection in the context of section 209(b) motor vehicle waivers).[3]

In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. To be consistent with section 209(e)(1), California's nonroad standards and enforcement procedures must not attempt to regulate engine categories that are permanently preempted from state regulation. To determine consistency with section 209(b)(1)(C), EPA typically reviews nonroad authorization requests under the same "consistency" criteria that are applied to motor vehicle waiver requests. Pursuant to section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California "standards and accompanying enforcement procedures are not consistent with [section 202(a)]" of the Act. Previous decisions granting waivers and authorizations have noted that state standards and enforcement procedures are inconsistent with section 202(a) if: (1) There is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time, or (2) the federal and state testing procedures impose inconsistent certification requirements.[4]

In considering whether to grant authorizations for accompanying enforcement procedures tied to standards for which an authorization has already been granted, EPA addresses questions as to whether the enforcement procedures undermine California's determination that its standards are as protective of public health and welfare as applicable federal standards, and whether the enforcement procedures are consistent with section 202(a).[5]

(C) EPA's Request for Comments

EPA requests comment on whether the OHRV Evaporative Emission Amendments meet the criteria for an authorization. Specifically, we request comment on: (a) Whether CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious; (b) whether California needs such standards to meet compelling and extraordinary conditions; and (c) whether California's standards and accompanying enforcement procedures are consistent with section 209 of the Act.

Procedures for Public Participation

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until November 1, 2016. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record from the public hearing, if any, all relevant written submissions, and other information that she deems pertinent. All information will be available for inspection at the EPA Air Docket No. EPA–HQ–OAR–2016–0181.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest extent possible and label it as "Confidential Business Information" (CBI). If a person making comments wants EPA to base its decision on a submission labeled as CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted to the public docket. To ensure that proprietary information is not

[1] 59 FR 36969 (July 20, 1994).

[2] 62 FR 67733 (December 30, 1997). The applicable regulations, now in 40 CFR part 1074, subpart B, § 1074.105, provide:

(a) The Administrator will grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as otherwise applicable federal standards.

(b) The authorization will not be granted if the Administrator finds that any of the following are true:

(1) California's determination is arbitrary and capricious.

(2) California does not need such standards to meet compelling and extraordinary conditions.

(3) The California standards and accompanying enforcement procedures are not consistent with section 209 of the Act.

(c) In considering any request to authorize California to adopt or enforce standards or other requirements relating to the control of emissions from new nonroad spark-ignition engines smaller than 50 horsepower, the Administrator will give appropriate consideration to safety factors (including the potential increased risk of burn or fire) associated with compliance with the California standard.

[3] 59 FR 36969 (July 20, 1994).

[4] *Id. See also* 78 FR 58090, 58092 (September 20, 2013).

[5] *See* CAA section 209(e)(2)(A)(i) and (iii), 42 U.S.C. 7543(e)(2)(A) (i) and (iii).

inadvertently placed in the public docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed, and according to the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: August 3, 2016.

Christopher Grundler,

Director, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2016–18873 Filed 8–8–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket No. 16–16; DA 16–761]

Termination of Dormant Proceedings

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Consumer and Governmental Affairs Bureau (CGB), terminates, as dormant, certain docketed Commission proceedings. The Commission believes that termination of these proceedings furthers the Commission's organizational goals of increasing the efficiency of its decision-making, modernizing the agency's processes in the digital age, and enhancing the openness and transparency of Commission proceedings for practitioners and the public.

DATES: Effective August 9, 2016.

FOR FURTHER INFORMATION CONTACT: Lauren Wilson, Consumer and Governmental Affairs Bureau at (202) 418–1607 or by email at *lauren.wilson@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order, *Termination of Certain Proceedings as Dormant,* document DA 16–761, adopted on July 21, 2016, and released on July 25, 2016 in CG Docket No. 16–16.

The full text of document DA 16–761 and copies of any subsequently filed documents in this matter will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. Document DA 16–761 can also be downloaded in Word or Portable Document Format (PDF) at: *https://apps.fcc.gov/edocs_public/attachmatch/DA-16-761A1.docx* or *https://apps.fcc.gov/edocs_public/attachmatch/DA-16-761A1.pdf.* The spreadsheet associated with document DA 16–761 listing the proceedings proposed for termination for dormancy is available in Excel or Portable Document Format at: *https://apps.fcc.gov/edocs_public/attachmatch/DA-16-761A2.xls* or *https://apps.fcc.gov/edocs_public/attachmatch/DA-6-761A2.pdf.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

Final Paperwork Reduction Act of 1995 Analysis

Document DA 16–761 does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

SYNOPSIS

1. In document DA 16–761, the Consumer and Governmental Affairs Bureau (CGB) terminates, as dormant, the proceedings listed on the Attachment hereto. CGB believes that termination of these proceedings furthers the Commission's organizational goals of increasing the efficiency of its decision-making, modernizing the agency's processes in the digital age, and enhancing the openness and transparency of Commission proceedings for practitioners and the public. In addition, on the basis of further evaluation, CGB leaves open two proceedings included in the *Fifth Dormant Proceedings Termination Public Notice,* published at 81 FR 26229, May 2, 2016, namely *Amendment of the Commission's Rules Relating to Program Exclusivity in the Cable and Broadcast Industries,* GN Docket No. 87–24, and *Amendment of the Commission's Rules to Extend Its Network and Non-Network Territorial Exclusivity, Syndicated Exclusivity, and Network Non-Duplication Protection Rules,* RM–10335.

2. On February 4, 2011, the Commission released a Report and Order that, *inter alia,* amended § 0.141 of the Commission's organizational rules to delegate authority to the Chief, CGB, to conduct periodic review of all open dockets with the objective of terminating those that were inactive. The Commission stated that termination of such proceedings also will include the dismissal as moot of any pending petition, motion, or other request for relief in the terminated proceeding that is procedural in nature or otherwise does not address the merits of the proceeding.

3. Following the release of the *Procedure Order,* published at 76 FR 24383, May 2, 2011, CGB, in consultation with the relevant other bureaus and offices, conducted a review of all open dockets and identified those dockets that could potentially be terminated. As a result of that process, CGB issued the *First Dormant Proceedings Termination Public Notice,* published at 76 FR 35892, June 20, 2011, listing the open dockets under consideration for termination, and providing interested parties the opportunity to file comments on these proposed terminations. Following these procedures, by Order released November 1, 2011, CGB terminated, as dormant the docketed proceedings listed in the attachment thereto. *See* 76 FR 70902, November 16, 2011. Further dormant proceeding terminations followed. *See Second Dormant Proceedings Termination Order,* published at 77 FR 60934, October 5, 2012; *Third Dormant Proceedings Termination Order,* published at 79 FR 58344, September 29, 2014; *Fourth Dormant Proceedings Termination Order,* published at 80 FR 4920, January 29, 2015.

4. Based on CGB's review of the record received in response to the *Fifth Dormant Proceedings Termination Public Notice,* it terminates the proceedings listed in document DA 16–761 and leaves open two proceedings that had been listed in Attachment A to the *Fifth Dormant Proceedings Termination Public Notice. See https://apps.fcc.gov/edocs_public/attachmatch/DA-16-761A2.xls* or *https://apps.fcc.gov/edocs_public/attachmatch/DA-16-761A2.pdf.* After review of the comment and CGB's further evaluation, it has determined that GN Docket No. 87–24 and RM–10335 will remain open and will not be terminated at this time.

5. *Venture Technologies (GN Docket No. 87–24, RM–10335).* Venture Technologies Group, LLC asks that GN Docket No. 87–24 (*Amendment of the Commission's Rules Relating to Program*

Exclusivity in the Cable and Broadcast Industries) and RM–10335 (*Amendment of the Commission's Rules to Extend Its Network and Non-Network Territorial Exclusivity, Syndicated Exclusivity, and Network Non-Duplication Protection Rules*) remain open due to recent Commission consideration of the same rules that are the subject of these proceedings. The CGB find that further action in these proceeding may be required. Accordingly, we will not terminate GN Docket No. 87–24 and RM–10335 at this time and they will remain open.

6. Upon publication of document DA 16–761 in the **Federal Register**, these proceedings will be terminated in the Electronic Comment Filing System (ECFS). The record in the terminated proceedings will remain part of the Commission's official records, and the various pleadings, orders, and other documents in these dockets will continue to be accessible to the public, post-termination.

Regulatory Flexibility Act

7. The Commission's action does not require notice and comment and is not subject to the Regulatory Flexibility Act of 1980, as amended. *See* 5 U.S.C. 601(2), 603(a). The Commission nonetheless notes that it anticipates that the rules adopted will not have a significant economic impact on a substantial number of small entities. As described above, the Commission primarily changes its own internal procedures and organizations and does not impose substantive new responsibilities on regulated entities. There is no reason to believe termination of certain dormant proceedings would impose significant costs on parties to Commission proceedings. To the contrary, the Commission takes the actions herein with the expectation that overall they will make dealings with the Commission quicker, easier, and less costly for entities of all sizes.

Congressional Review Act

The Commission will not send a copy of document DA 16–761 pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the Commission is not adopting, amending, revising, or deleting any rules.

Ordering Clauses

Pursuant to the authority contained in sections 4(i), and 4(j) of the Communications Act, 47 U.S.C. 154(i) and (j), and § 0.141 of the Commission's rules, that the proceedings set forth in document DA 16–761 are TERMINATED.

Federal Communications Commission.

D'wana Terry,

Associate Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2016–18786 Filed 8–8–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Items From Sunshine Act Meeting

August 4, 2016.

The following consent agenda has been deleted from the list of items scheduled for consideration at the Thursday, August 4, 2016, Open Meeting and previously listed in the Commission's Notice of July 28, 2016. Items 1 and 2 have been adopted by the Commission.

* * * * *

Consent Agenda

The Commission will consider the following subjects listed below as a consent agenda and these items will not be presented individually:

1	MEDIA	TITLE: Atlantic City Board of Education, Applications for Renewal of License and Minor Modifications to WAJM(FM), Atlantic City, NJ SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning the renewal of WAJM(FM), a student-run station and an Application for Review filed by Press Communications, LLC.
2	MEDIA	TITLE: Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Seaford, Delaware) SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning the Application for Review filed by PMCM, former licensee of KJWY(TV).
3	GENERAL COUNSEL	TITLE: In the Matter of Warren Havens on Request for Inspection of Records (FOIA Control Nos. 2014–650, 2014–651, 2014–663, and 2014–664) SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by Warren Havens, which appealed two decisions by the Enforcement Bureau denying four Freedom of Information Act requests.

Federal Communications Commission.

Gloria Miles,

Federal Register Liaison Officer.

[FR Doc. 2016–18964 Filed 8–5–16; 11:15 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

[Notice 2016–07]

Filing Dates for the Ohio Special Democratic Primary Election in the 8th Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Ohio has scheduled a special primary election on September 13, 2016, to fill the vacancy on the November 8, 2016, general election ballot that was created by the withdrawal of the Democratic nominee Corey Foister.

Committees required to file reports in connection with the Special Primary Election on September 13, 2016, shall file a 12-day Pre-Primary Report.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth S. Kurland, Information Division, 999 E Street NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the Ohio Special Primary Election shall file a 12-day Pre-Primary Report on September 1, 2016. (See chart below for the closing date for each report.)

Note that these reports are in addition to the campaign committee's regular quarterly filings. (See chart below for the closing date for each report).

Unauthorized Committees (PACs and Party Committees)

Political committees filing on a quarterly basis in 2016 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the

Ohio Special Primary Election by the close of books for the applicable report(s). (See chart below for the closing date for each report.)

Committees filing monthly that make contributions or expenditures in connection with the Ohio Special Primary Election will continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the Ohio Special Primary Election may be found on the FEC Web site at *http://www.fec.gov/info/report_dates.shtml.*

Disclosure of Lobbyist Bundling Activity

Principal campaign committees, party committees and Leadership PACs that are otherwise required to file reports in connection with the special primary election must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of the $17,600 during the special election reporting periods. (See chart below for closing date of each period.) 11 CFR 104.22(a)(5)(v), (b).

CALENDAR OF REPORTING DATES FOR OHIO SPECIAL DEMOCRATIC PRIMARY ELECTION

Report	Close of books [1]	Reg./cert. & overnight mailing deadline	Filing deadline
Committees Involved in the Special Primary (09/13/16) Must File			
Pre-Primary	08/24/16	08/29/16	09/01/16
October Quarterly	09/30/16	[2] 10/15/16	10/15/16

[1] The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee up through the close of books for the first report due.

[2] Notice that this filing deadline falls on a weekend or federal holiday. Filing deadlines are not extended when they fall on nonworking days. Accordingly, reports filed by methods other than registered, certified or overnight mail must be received by close of business on the last business day before the deadline.

On behalf of the Commission.

Dated: August 3, 2016.

Matthew S. Petersen,

Chairman, Federal Election Commission.

[FR Doc. 2016–18839 Filed 8–8–16; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 2, 2016.

A. Federal Reserve Bank of Boston (Prabal Chakrabarti, Senior Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02210–2204. Comments can also be sent electronically to *BOS.SRC.Applications.Comments@bos.frb.org:*

1. *Westfield Financial, Inc., Westfield, Massachusetts ("Westfield");* to become a savings and loan holding company. Westfield currently is a savings and loan holding company; Westfield proposes to become a bank holding company for a moment in time by merging with Chicopee Bancorp, Chicopee, Massachusetts and acquire its subsidiary bank, Chicopee Savings Bank, Chicopee, Massachusetts. Westfield also has applied to retain its savings association, Westfield Bank, Westfield, Massachusetts. After the acquisition, Westfield proposes to merge Chicopee Savings Bank with Westfield Bank, with Westfield Bank as the surviving entity, and become a savings and loan holding company. Westfield also proposes to acquire Chicopee Funding Corporation, which provides funding to Chicopee and its affiliates, pursuant to section 238.54 of Regulation LL.

Board of Governors of the Federal Reserve System, August 4, 2016.

Michele T. Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–18856 Filed 8–8–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of

a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 2, 2016.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Northern Interstate Financial, Inc., Norway, Michigan;* to merge with C.F.C. Bancorp, Inc., Crystal Falls, Michigan, and thereby indirectly acquire First National Bank of Crystal Falls, both of Crystal Falls, Michigan.

Board of Governors of the Federal Reserve System, August 4, 2016.

Michele T. Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–18858 Filed 8–8–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice for comment regarding the Federal Reserve proposal to extend with revision the clearance under the Paperwork Reduction Act for the following information collection activity.

SUMMARY: The Board of Governors of the Federal Reserve System (Board or Federal Reserve) invites comment on a proposal to revise the debit card issuer survey (FR 3064a).

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), to approve of and assign OMB numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB number.

DATES: Comments must be submitted on or before October 11, 2016.

ADDRESSES: You may submit comments, identified by *FR 3064a* or *FR 3064b*, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street (between 18th and 19th Streets NW.) Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Proposal to approve under OMB delegated authority the extension for three years, with revision, of the following report:

Report title: Interchange Transaction Fees Surveys.

Agency form number: FR 3064a (extended with revision) and FR 3064b (extended without revision).

OMB control number: 7100–0344.

Frequency: FR 3064a—Biennial; FR 3064b—Annual.

Respondents: Issuers of debit cards (FR 3064a) and payment card networks (FR 3064b).

Estimated annual burden hours: FR 3064a: 89,280 hours; FR 3064b: 1,275 hours.

Estimated average hours per response: FR 3064a: 160 hours; FR 3064b: 75 hours.

Number of respondents: FR 3064a: 558; FR 3064b: 17.

General description of report: The Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) requires the Board to disclose, at least every two years, such aggregate or summary information concerning the costs incurred for, and interchange transaction fees received by, issuers with respect to debit card transactions, as the Board considers appropriate or in the public interest. The data from these surveys are used in fulfilling that disclosure requirement. In addition, the Board uses data from the payment card network survey (FR 3064b) to publicly report on an annual basis the extent to which networks have established separate interchange fees for exempt and covered issuers. Finally, the Board uses the data from these surveys in determining whether to propose revisions to the interchange fee standards in Regulation II (12 CFR part 235). The Dodd-Frank Act provides the Board with authority to require debit card issuers and payment card networks to submit information in order to carry out provisions of the Dodd-Frank Act regarding interchange fee standards.

Legal authorization and confidentiality: The FR 3064a and 3064b surveys are authorized by subsection 920(a) of the Electronic Fund Transfer Act, which was amended by section 1075(a) of the Dodd-Frank Act.[1] This statutory provision requires the Board, at least once every two years,[2] to disclose aggregate or summary information concerning the costs incurred and interchange transaction fees charged or received by issuers or payment card networks in connection with the authorization, clearance or settlement of electronic debit transaction, as the Board considers appropriate and in the public interest.[3] It also provides the Board with authority to require issuers and payment card networks to provide information to enable the Board to carry out the provisions of the subsection.[4] The obligation to respond to these surveys is mandatory.

In accordance with the statutory requirement, the Board will release aggregate or summary information from the survey responses. In addition, the Board will release, at the network level, the percentage of total number of transactions, the percentage of total value of transactions, and the average transaction value for exempt and not-exempt issuers obtained on the FR 3064b. The Board has determined to release this information both because it can already be determined mathematically based on the information the Board currently releases on average interchange fees and because the Board believes the release of such information may be useful to issuers and merchants in choosing payment card networks in which to participate and to policymakers in assessing the effect of Regulation II on the level of interchange fees received by issuers over time.

However, the remaining individual issuer and payment card information collected on these surveys can be kept confidential under exemption (b)(4) of the Freedom of Information Act (FOIA) because staff has advised that, if released, this information would cause substantial harm to the competitive position of the survey respondents.[5]

Current Actions: The Board proposes to revise the debit card issuer survey (FR 3064a) by deleting questions in which respondents are asked to allocate their costs between fixed costs and variable costs. In addition, the Board proposes to alter the timing of the survey such that, for each data collection, the survey be made available to respondents in mid-January with a filing deadline in mid-April.[6] This allows respondents a full 90 days to respond to the surveys.

Proposed Revisions to FR 3064a

I. Information for all Debit Card Transactions (including general-use prepaid card transactions): The Board proposes to delete questions 3e and 3f, which break out the fixed and variable cost components for line items 3b.1 In-house costs and 3b.2 Third-party processing fees, respectively.

II. Information for Single-Message (PIN) Debit Card Transactions (excluding general-use prepaid card transactions): The Board proposes to delete questions 3e and 3f, which break out the fixed and variable cost components for line items 3b.1 In-house costs and 3b.2 Third-party processing fees, respectively.

III. Information for Dual-Message (Signature) Debit Card Transactions (excluding general-use prepaid card transactions): The Board proposes to delete questions 3e and 3f, which break out the fixed and variable cost components for line items 3b.1 In-house costs and 3b.2 Third-party processing fees, respectively.

IV. Information for General-Use Prepaid Card Transactions: The Board proposes to delete questions 3e and 3f, which break out the fixed and variable cost components for line items 3b.1 In-house costs and 3b.2 Third-party processing fees, respectively.

Definitions for variable and fixed costs would remain in the instructions.[7] The break out of variable and fixed costs was originally included so as to enable the Board to respond to possible outcomes of pending litigation regarding Regulation II. This litigation has been resolved.

The Board also proposes to make several clarifications throughout both surveys.

Board of Governors of the Federal Reserve System, August 4, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–18852 Filed 8–8–16; 8:45 am]

BILLING CODE 6210–01–P

[1] 15 U.S.C. 1693o–2.

[2] The subsection refers to biannual disclosures and the Board interprets this to mean once every two years. *See* 76 FR 43458 (July 20, 2011).

[3] 15 U.S.C. 1693o–2(a)(3)(B).

[4] *Id.*

[5] 5 U.S.C. 552(b)(4) (exempting from disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential").

[6] The Board will provide respondents with secure online access to respond to the debit card issuer and payment card network surveys.

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank

indicated or the offices of the Board of Governors not later than August 31, 2016.

A. Federal Reserve Bank of Philadelphia (William Spaniel, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521. Comments can also be sent electronically to *Comments.applications@phil.frb.org:*

1. *Hamilton Bancorp, Inc.,* Ephrata, Pennsylvania, to become a bank holding company by acquiring Stonebridge Bank, West Chester, Pennsylvania.

Board of Governors of the Federal Reserve System, August 3, 2016.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–18783 Filed 8–8–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 24, 2016.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Gerald F. Fitzgerald, Jr., Palatine, Illinois;* the Gerald F. Fitzgerald, Jr. Trust Dated September 10, 1987, as Restated December 31, 2009, Palatine, Illinois with Gerald F. Fitzgerald, Jr., as trustee; S.C. Investments, L.P., Palatine, Illinois, with Gerald F. Fitzgerald as general partner; the Julie F. Schauer 1994 Trust, Palatine, Illinois, with Julie F. Schauer as trustee; the GFF Family Exempt Trust Dated January 18, 1988, Inverness, Illinois, with Gerald F. Fitzgerald, Jr., James G. Fitzgerald, Thomas G. Fitzgerald and Peter G. Fitzgerald, Palatine, Illinois, as co-trustees; and Otis Road Investments, LP, Inverness, Illinois, with Otis Management LLC, Inverness, Illinois as its general partner ("GP"); and the principal of GP, James G. Fitzgerald, acting in concert; to retain and acquire additional shares of LaSalle Bancorp, Inc. and thereby indirectly acquire shares of Hometown National Bank, both of LaSalle, Illinois.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Larry Mulcahy, Olathe, Kansas,* to acquire voting shares of Roxbury Bancshares, Inc., and thereby acquire shares of Roxbury Bank, both of Roxbury, Kansas.

Board of Governors of the Federal Reserve System, August 4, 2016.

Michele T. Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–18857 Filed 8–8–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0032; Docket 2016–0053; Sequence 30]

Submission for OMB Review; Contractor Use of Interagency Fleet Management System Vehicles

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning contractor use of interagency fleet management system vehicles. A notice was published in the **Federal Register** at 81 FR 28871 on May 10, 2016. No comments were received.

DATES: Submit comments on or before September 8, 2016.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0032, Contractor Use of Interagency Fleet Management System Vehicles". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0032, Contractor Use of Interagency Fleet Management System Vehicles" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0032, Contractor Use of Interagency Fleet Management System Vehicles.

Instructions: Please submit comments only and cite Information Collection 9000–0032, Contractor Use of Interagency Fleet Management System Vehicles, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Mahruba Uddowla, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, 703–605–2868 or email at *mahruba.uddowla@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

If it is in the best interest of the Government, the contracting officer may authorize cost-reimbursement contractors to obtain, for official purposes only, interagency fleet management system (IFMS) vehicles and related services. Federal Acquisition Regulation (FAR) 51.205 and the clause at FAR 52.251–2, Interagency Fleet Management System (IFMS) Vehicles and Related Services, are to be used in solicitations and contracts when a cost reimbursement contract is contemplated and the contracting officer may authorize the contractor to use IFMS vehicles and related services.

Before a contracting officer may authorize cost-reimbursement contractors to obtain IFMS vehicles and related services, the contracting officer must have, among other requirements:

- A written statement that the contractor will assume, without the right of reimbursement from the Government, the cost or expense of any use of the IFMS vehicles and services not related to the performance of the contract;
- Evidence that the contractor has obtained motor vehicle liability insurance covering bodily injury and property damage, with limits of liability as required or approved by the agency, protecting the contractor and the Government against third-party claims arising from the ownership, maintenance, or use of an IFMS vehicle; and
- Considered any recommendations of the contractor. The information is used by the Government to determine whether it is in the Government's best interest to authorize a cost-reimbursement contractor, for official purposes only, to use IFMS vehicles and related services.

Authorized contractors shall submit requests for IFMS vehicles and related services in writing to the appropriate GSA point of contact in accordance with the FAR. Contractors' requests for vehicles or related services must include:

- Two copies of the agency authorization;
- The number of vehicles and related services required and period of use;
- A list of employees who are authorized to request the vehicles or related services;
- A listing of equipment authorized to be serviced; and
- Billing instructions and address.

B. Annual Reporting Burden

Respondents: 132.

Responses per Respondent: 1.0.

Total Annual Responses: 132.

Hours per Response: 1.0.

Total Burden Hours: 132.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0032, Contractor Use of Interagency Fleet Management System Vehicles, in all correspondence.

Dated: August 4, 2016.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2016–18817 Filed 8–8–16; 8:45 am]

BILLING CODE 6820–EP–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–XXXX; Docket No. 2016–0001; Sequence 10]

Information Collection; Permitting Notice of Initiation

AGENCY: Federal Permitting Improvement Steering Council (FPIC), General Services Administration (GSA).

ACTION: Notice of request for comments regarding a new request for an OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement regarding OMB Control No: 3090–XXXX; Permitting Notice of Initiation.

DATES: Submit comments on or before October 11, 2016.

ADDRESSES: Submit comments identified by Information Collection 3090–XXXX; Permitting Notice of Initiation by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for "Information Collection 3090–XXXX; Permitting Notice of Initiation". Select the link "Submit a Comment" that corresponds with "Information Collection 3090–XXXX; Permitting Notice of Initiation". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 3090–XXXX; Permitting Notice of Initiation" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405.

Instructions: Please submit comments only and cite Information Collection 3090–XXXX; Permitting Notice of Initiation, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Angela Colamaria, Permitting Team Lead, at telephone 202–395–3708 or via email to *PermittingTeam@omb.eop.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

In December 2015, the Fixing America's Surface Transportation (FAST) Act outlined a set of fundamental requirements designed to change the way federal government agencies carry out their permitting and environmental review responsibilities for major infrastructure projects. Section 41003(a)(1)(A) of the FAST Act states that a "project sponsor of a covered project shall submit to the Executive Director and the facilitating agency notice of the initiation of a proposed covered project." The statute goes on to describe the required information to be contained in this notice of initiation.

In order to accommodate this statutory requirement, the Federal Permitting Improvement Steering Council (FPISC) has developed the Notice of Initiation form. The information collected via the Notice of Initiation form will be reviewed by the facilitating agency, as identified for the particular type of project under consideration, as well as the Executive Director of the FPISC in order to verify that the project in question qualifies to be considered a "covered project." If the project outlined in the Notice of Initiation is accepted as a covered project, the project will be added to the online Permitting Dashboard and a series of steps will be taken by the facilitating agency and the Executive Director as outlined in Title XLI of the FAST Act.

B. Annual Reporting Burden

Respondents: 75.
Responses per Respondent: 1.
Total Annual Responses: 75.
Hours per Response: 2.
Total Burden Hours: 150.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary, whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in

which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–XXXX, Permitting Notice of Initiation, in all correspondence.

Dated: July 29, 2016.

David A. Shive,

Chief Information Officer.

[FR Doc. 2016–18796 Filed 8–8–16; 8:45 am]

BILLING CODE 6820–FM–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0147; Docket 2016–0053; Sequence 17]

Submission for OMB Review; Pollution Prevention and Right-to-Know Information

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning pollution prevention and right-to-know information. A notice was published in the **Federal Register** at 81 FR 26564 on May 3, 2016. No comments were received.

DATES: Submit comments on or before September 8, 2016.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0147, Pollution Prevention and Right-to-Know Information". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0147, Pollution Prevention and Right-to-Know Information" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0147, Pollution Prevention and Right-to-Know Information.

Instructions: Please submit comments only and cite Information Collection 9000–0147, Pollution Prevention and Right-to-Know Information, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Charles Gray, Procurement Analyst, Office of Acquisition Policy, GSA, 703–795–6328 or email *charles.gray@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001–11050) and the Pollution Prevention Act of 1990 (PPA), (42 U.S.C. 13101–13109); and Executive Order 13693, Planning for Federal Sustainability in the Next Decade, dated March 25, 2015, require that Federal facilities maintain reports on hazardous materials and toxic chemicals and pollution prevention efforts. In keeping with this mandate, Federal contractors performing at a Federal facility must provide sufficient information to the Federal Government to ensure that the facility is compliant with the E.O., PPA, and EPCRA. This information collection is carried out by means of Federal Acquisition Regulation (FAR) clause 52.223–5, Pollution Prevention and Right-To-Know Information.

B. Annual Reporting Burden

Number of Respondents: 3,035.

Responses per Respondent: 1.6.

Total Annual Responses: 4,713.

Hours per Response: 3.7.

Estimated Total Burden Hours: 17,498.

Affected Public: Businesses or other-for-profit entities and not-for-profit institutions.

Frequency: On occasion.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulations (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control Number 9000–0147, Pollution Prevention and Right-to-Know Information, in all correspondence.

Dated: August 4, 2016.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2016–18818 Filed 8–8–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–16–16AVM; Docket No. CDC–2016–0065]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period; Withdrawal.

SUMMARY: The Centers for Disease Control and Prevention (CDC) in the Department of Health and Human Services (HHS) announces the withdrawal of the notice published under the same title on July 26, 2016 for public comment.

DATES: Effective August 9, 2016.

FOR FURTHER INFORMATION CONTACT: Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: On July 26, 2016 CDC published a notice in the **Federal Register** titled "Proposed Data Collection Submitted for Public Comment and Recommendations" (81 FR 48799). This notice with **Federal Register** Document 2016–17601 and Docket number CDC–2016–0065, was published prematurely and inadvertently. The notice is being withdrawn immediately for public comment. A new notice will be published at a later date for public comment.

Jeffrey M. Zirger,

Acting Chief, Information Collection Review Office, Health Scientist, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–18866 Filed 8–8–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–16AFR]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Emergency Operations Center (EOC) Clinical Inquiries Database—New—Office of Public Health Preparedness and Response (OPHPR), Centers for Disease Control and Prevention (CDC)

Background and Brief Description

In May 2015, the Pan American Health Organization (PAHO) issued an alert regarding the first confirmed Zika virus infections in Brazil. Since then, CDC has been responding to increased reports of Zika and has assisted in investigations with PAHO and the Brazil Ministry of Health. The first regional travel notices for Zika in South America and Mexico were posted in December 2015. In December 2015, the Commonwealth of Puerto Rico, a United States territory, reported its first confirmed locally transmitted Zika virus case. Cases of local transmission have recently been confirmed in two other U.S. territories, the United States Virgin Islands and American Samoa. As of April 6, 2016, U.S. territories had reported 351 locally acquired Zika cases and 3 travel-associated Zika cases to CDC. Of the 354 cases reported, 37 were in pregnant women. Zika has not been spread by mosquitoes in the continental United States. However, lab tests have confirmed Zika virus in travelers returning to the United States. These travelers have gotten the virus from mosquito bites and a few non-travelers got Zika through sex. With the recent outbreaks in the Americas, the number of Zika cases among travelers visiting or returning to the United States is increasing. CDC monitors and reports to the public cases of Zika, which will help improve our understanding of how and where Zika is spreading.

Zika virus is spread to people primarily through the bite of an infected Aedes species mosquito (A. aegypti and A. albopictus). Mosquitoes that spread Zika virus are aggressive daytime biters, but they can also bite at night. A pregnant woman can pass Zika virus to her fetus during pregnancy. CDC is studying how Zika affects pregnancies. Zika is linked to microcephaly, a severe birth defect that is a sign of incomplete brain development. Microcephaly is a condition where a baby's head is much smaller than expected. During pregnancy, a baby's head grows because the baby's brain grows. Microcephaly can occur because a baby's brain has not developed properly during pregnancy or has stopped growing after birth.

In February and March 2016, CDC used OMB emergency clearance procedures to initiate and expedite multiple urgently needed information collections in American Samoa, Puerto Rico, Brazil, and domestically within state, tribal, local, and territorial (STLT) jurisdictions. These procedures have allowed the agency to target and refine public health interventions to arrest ongoing spread of infection.

With this notice, the CDC is announcing its intention to seek OMB clearance to continue a Zika-related information collections a call center in CDC's Emergency Operations Center (EOC) to respond to inquiries on clinical care of persons potentially of interest for Zika virus infection beyond its current emergency expiration date [OMB Control No. 0920–1101, expiration date 8/31/16]. Respondents to this information collection include the general public, clinicians, and employees at STLT health departments.

The purpose of this information collection is to document and track clinical inquiries made to the CDC EOC call center and to systematically collect standardized clinical/demographic/epidemiological information about suspected cases. The emergency clearance for this information collection dealt specifically with Zika-related clinical inquiries. However, the new ICR will cover this project for any EOC activation. Regardless of the disease or hazard being responded to, the EOC operates this call center to answer and respond to clinical inquiries. This information collection is a necessary part of operating this call center and responding to emergency situations.

These information collections will align with their legislative authority, Section 301 of the Public Health Service Act (42 U.S.C. 241). There are no total costs to the respondents other than their time. The total annualized burden requested is 305 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
State and Local Health Departments	Clinical Inquiries Database	420	1	15/60
Clinicians and Other Providers	Clinical Inquiries Database	800	1	15/60

Jeffrey M. Zirger,

Health Scientist, Acting Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–18837 Filed 8–8–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–2147]

General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting, Establishment of a Public Docket, Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice, establishment of a public docket, request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held on September 20 and 21, 2016, from 8 a.m. to 6 p.m.

ADDRESSES: Hilton Washington, DC North/Gaithersburg, Grand Ballroom, 620 Perry Pkwy., Gaithersburg, MD 20877. The hotel's telephone number is 301–977–8900. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–N–2147 for "General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your

comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Evella Washington, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1535, Silver Spring, MD 20993–0002, 301–796–6683, *Evella.Washington@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area).

A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: On September 20 and 21, 2016, the Committee will discuss and make recommendations regarding the classification of certain wound care products containing antimicrobials and other drugs as part of the routine process for device classification. These products are regulated under product code FRO, "Dressing, Wound, Drug," and are considered "pre-amendments" because they were in commercial distribution prior to May 28, 1976, when the Medical Devices Amendments were enacted, and have not yet been classified under section 513 of the Federal Food, Drug, and Cosmetic Act.

As a part of the classification process, FDA is seeking committee input on the indications for use, risks to health, and safety and effectiveness of these wound care products, and how they should be classified. They may be classified in class I (general controls), class II (special and general controls), or class III (premarket approval (PMA), requiring demonstration of safety and effectiveness for each product).

FDA believes some of these products may meet the definition of class II whereas others may meet the definition of class III in light of their intended use, composition, the extent of evidence of clinical benefit, and the risks they pose. For the subset of the these products that contain antibiotics, FDA appreciates the importance of appropriately addressing the risk of antimicrobial resistance (AMR) in light of the increasingly significant national public health concern posed by AMR. FDA is also aware of differences in the claims made for some products even though they may be regulated in the same manner.

FDA intends to make background material available to the public on its Web site at least 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the meeting, and the background material will be posted on FDA's Web site after the meeting. Background material will be available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before September 6, 2016. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on September 20 and between approximately 9 a.m. and 10:30 a.m. on September 21, 2016. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before August 26, 2016. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by August 29, 2016.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA is establishing a docket for public comment on this document. The docket number is FDA–2016–N–2147. The docket will close on October 20, 2016. Comments received on or before September 1, 2016, will be provided to the committee. Comments received after that date will be taken into consideration by the Agency.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact AnnMarie Williams at *AnnMarie.Williams@fda.hhs.gov,* or 301–796–5966 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 3, 2016.

Janice M. Soreth,

Acting Associate Commissioner, Special Medical Programs.

[FR Doc. 2016–18814 Filed 8–8–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; NIDCD Institutional Research Training Grant Application Review.

Date: September 7, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Shiguang Yang, DVM, Ph.D., Scientific Review Officer Division of Extramural Activities NIDCD, NIH, 6001 Executive Blvd., Room 8349, Bethesda, MD 20892, 301–496–8683, *yangshi@nidcd.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; NIDCD Clinical Research Center Grant (P50) Review.

Date: September 14, 2016.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Katherine Shim, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIH/NIDCD, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, 301–496–8683, *katherine.shim@nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders, Special Emphasis Panel; P50 Review Meeting.

Date: September 19, 2016.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Kausik Ray, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Rockville, MD 20850, 301–402–3587, *rayk@nidcd.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders, Special Emphasis Panel; Revised CRC Grant Review.

Date: September 20, 2016.

Time: 11:00 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sheo Singh, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, 301–496–8683, *singhs@nidcd.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; VSL Clinical Trial Review.

Date: September 22, 2016.

Time: 11:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Shiguang Yang, DVM, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6001 Executive Blvd., Room 8349, Bethesda, MD 20892, 301–496–8683, *yangshi@nidcd.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders, Special Emphasis Panel; Synaptopathy R01 Review.

Date: October 4, 2016.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Kausik Ray, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Rockville, MD 20850, 301–402–3587, *rayk@nidcd.nih.gov.*

Name of Committee: Communication Disorders Review Committee.

Date: October 6–7, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Eliane Lazar-Wesley, Scientific Review Officer, Division of Extramural Activities, National Institute on Deafness and other Communication Disorders/NIH, 6001 Executive Blvd., MSC 9670, Bethesda, MD 20892–8401, 301–496–8683, *el6r@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: August 3, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–18864 Filed 8–8–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Risk, Prevention, and Health Behavior.

Date: August 11, 2016.

Time: 10:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Martha M. Faraday, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, *faradaym@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 4, 2016.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–18865 Filed 8–8–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing and/or co-development in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR part 404 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing and/or co-development.

ADDRESSES: Invention Development and Marketing Unit, Technology Transfer Center, National Cancer Institute, 9609 Medical Center Drive, Mail Stop 9702, Rockville, MD 20850–9702.

FOR FURTHER INFORMATION CONTACT: Information on licensing and co-development research collaborations, and copies of the U.S. patent applications listed below may be obtained by contacting: Attn. Invention Development and Marketing Unit, Technology Transfer Center, National Cancer Institute, 9609 Medical Center Drive, Mail Stop 9702, Rockville, MD 20850–9702, Tel. 240–276–5515 or email *ncitechtransfer@mail.nih.gov*. A signed Confidential Disclosure Agreement may be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: Technology description follows.

Title of invention: Vaccines for HIV.

Description of Technology: Although the development of an effective HIV vaccine has been an ongoing area of research, the high variability in HIV–1 virus strains has represented a major challenge in successful development. Ideally, an effective candidate vaccine would provide protection against the majority of clades of HIV. Two major challenges are immunodominance and sequence diversity. One strategy for overcoming these two issues is to identify the conserved regions of the virus and exploit them for use in a targeted therapy.

Researchers at the National Cancer Institute's Vaccine Branch used conserved elements (CEs) of the polypeptides Gag and Env as immunogenic compositions to induce an immune response to HIV–1 envelope polypeptides and Gag polypeptides. conserved elements (CEs) of the polypeptides Gag and Env as immunogenic compositions to induce an immune response to HIV–1 envelope polypeptides and Gag polypeptides. This invention is based, in part, on the discovery that administration of one or more polypeptides comprising CEs, separated by linkers and collinearly arranged, of HIV Env or Gag CE proteins can provide a robust immune response compared to administration of a full-length Env or Gag protein. The Env-CE DNA vaccines were tested in a rhesus macaque model and were able to induce a cellular and humoral immune response in this model whereas vaccination with the full length DNA did not produce the same effect.

A robust increase in immunity was observed when rhesus macaques were subjected to a prime-boost protocol. First, rhesus macaques were primed with Env-CE DNA and boosted with full length Env resulting in an observed increase in both the cellular and humoral responses. A further increase in immune response was observed from priming with CE and boosting with a combination of CE and full length DNA resulting in a significantly improved breadth of immune responses. These improved protocols may help solve the immunodominance problem observed in current protocols. This is considered a major obstacle for HIV vaccine development. The CE vaccines described by this invention have potential for use as prophylactic and therapeutic HIV vaccines.

Potential Commercial Applications:

- HIV vaccines

Value Proposition:

- Addresses two key hurdles faced by current HIV vaccines: sequence diversity of HIV and immunodominance.
- Induces cross-clade specific immune response.
- The prime-boost immunization regimen is not limited to HIV, but can be employed to improve the induction of immune responses to any subdominant epitopes (cellular or humoral) to increase breadth, magnitude and quality of the immune response.

Development Stage: Pre-clinical (in vivo validation).

Inventor(s): George Pavlakis, Barbara Felber, Antonio Valentin, James Mullins.

Intellectual Property: HHS Reference #E–087–2015/0–US–01, corresponding to U.S. Provisional Patent App. #62/161,123, filed on May 13, 2015, entitled: HIV Env Conserved Element DNA Vaccine.

HHS Reference #E–009–2016/0–US–01, corresponding to U.S. Provisional Patent App. #62/241,599, filed on October 14, 2015, entitled: Prime-Boost combination vaccine to Expand Breadth of Immunological Response.

HHS Reference #E–087–2015/0–PCT–02; corresponding to International Patent App. #PCT/US2016/032317; filed on May 13, 2016, entitled: Methods and Compositions for inducing an immune response using Conserved Element Constructs.

Publications

- Kulkarni, V. *et al. PLoS One*;9:e86254. 2014. *http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0086254*
- Kulkarni, V. *et al. PLos One* Oct 22;9(10):e111085. doi: 10.1371/journal.pone.0111085. eCollection, 2014. *http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0111085*

Related Technologies: HHS Reference #E–132–2012/0 Method of Altering the Immunodominance Hierarchy of HIV Gag by DNA Vaccine Expressing Conserved Regions.

Contact Information: Requests for copies of the patent application or inquiries about licensing, research collaborations, and co-development opportunities should be sent to John D. Hewes, Ph.D., email: *john.hewes@nih.gov*.

Dated: August 2, 2016.

John D. Hewes,

Technology Transfer Specialist, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2016–18861 Filed 8–8–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Review of Late Arriving K Mechanism Grant Applications.

Date: August 17, 2016.

Time: 8:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/ NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, 301–496–0660, *Benzingw@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Clinician Training Program R25 Application Review.

Date: August 17, 2016.

Time: 2:00 p.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite MSC 9529, Bethesda, MD 20892–9529, 301–496–0660, *Benzingw@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Biorepository Resource Access Committee (BRAC) X01 Meeting.

Date: August 18, 2016.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Joel A. Sayoff, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, *joel.saydoff@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: *August 3, 2016.*

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–18863 Filed 8–8–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing and/or co-development in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR part 404 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing and/or co-development.

ADDRESSES: Invention Development and Marketing Unit, Technology Transfer Center, National Cancer Institute, 9609 Medical Center Drive, Mail Stop 9702, Rockville, MD, 20850–9702.

FOR FURTHER INFORMATION CONTACT: Information on licensing and co-development research collaborations, and copies of the U.S. patent applications listed below may be obtained by contacting: Attn. Invention Development and Marketing Unit, Technology Transfer Center, National Cancer Institute, 9609 Medical Center Drive, Mail Stop 9702, Rockville, MD, 20850–9702, Tel. 240–276–5515 or email *ncitechtransfer@mail.nih.gov.* A signed Confidential Disclosure Agreement may be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: Technology description follows.

Title of invention: Methods of Treating or Preventing Demyelination Using Thrombin Inhibitors and Methods of Detecting Demyelination Using Neurofascin 155.

Description of Technology: Neurofascin 155 is a cell adhesion molecule that attaches myelin to axolemma. Contactin-associated protein (Caspr) is a major component of the perinodes. Perinodal astrocytes regulate nodal structure and myelin thickness by regulating thrombin-dependent cleavage of axo-glial junction attaching the outermost paranodal loops of myelin to the axon membrane. Agents which inhibit the cleavage of Neurofascin 155 or the cleavage of Caspr1 stabilize the node and may impede the immunological attack of myelin where the paranodes are attached to the axon.

The technology is directed to methods of treating diseases characterized by demyelination (such as Multiple sclerosis), white matter injury, or conditions associated with myelin remodeling by administering an agent that inhibits cleavage of Neurofascin 155 or Caspr1. The agent could be a thrombin inhibitor, an agent that inhibits thrombin expression, an anti-thrombin antibody that specifically inhibits thrombin mediated cleavage of Neurofascin 155, a mutated version or fragment of Neurofascin 155 or Caspr1, antibodies to Neurofascin 155 or Caspr1.

The technology also includes methods of detecting remodeling of myelin by detecting changes in levels of Neurofascin 125 and Neurofascin 30 in a biological sample, such as central spinal fluid or blood.

Potential Commercial Applications: Treatment of demyelinating diseases, such as Multiple sclerosis.

Treatment of diseases characterized by white matter injury or myelin remodeling.

Monitoring the amount of or rate of remodeling of myelin to determine the efficacy of agents used demyelinating diseases.

Value Proposition: Agents which inhibit cleavage of Neurofascin 155 or Caspr1 or inhibit thrombin activity are a novel approach to treating demyelinating diseases or diseases characterized by white matter injury.

The methods of detecting modification in the amount or rate of remodeling of myelin can be used to determine the efficacy of treatments of neurological disorders and are less expensive than other methods currently used.

Development Stage: Pre-clinical (in vivo validation).

Inventor(s): R. Douglas Fields *https://science.nichd.nih.gov/confluence/display/snsdp/Home.*

Intellectual Property: HHS Reference No. E–151–2015/0–PCT–02.

PCT application, PCT/US2016/027776, filed April 15, 2016 entitled "Methods of Treating or Preventing Demyelination Using Thrombin Inhibitors and Methods of Detecting Demyelination Using Neurofascin 155".

Publications: 1. In preparation.

Collaboration Opportunity: Researchers at the *Eunice Kennedy Shriver* National Institute of Child Health and Human Development ("NICHD"), seek CRADA partner or collaboration for development of agents to treat multiple sclerosis or other conditions associated with myelin remodeling by administering an agent that inhibits cleavage of Neurofascin 155 or Caspr1. The agent could be a

thrombin inhibitor, an agent that inhibits thrombin expression, an anti-thrombin antibody that specifically inhibits thrombin mediated cleavage of Neurofascin 155, a mutated version or fragment of Neurofascin 155 or Caspr1, or antibodies to Neurofascin 155 or Caspr1.

Contact Information: Requests for copies of the patent application or inquiries about licensing, research collaborations, and co-development opportunities should be sent to John D. Hewes, Ph.D., email: *john.hewes@nih.gov*.

Dated: August 2, 2016.

John D. Hewes,

Technology Transfer Specialist, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2016–18862 Filed 8–8–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2016–0053]

Privacy Act of 1974; Department of Homeland Security/ICE–015 LeadTrac System of Records

AGENCY: Privacy Office, Department of Homeland Security (DHS).

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) proposes to establish a new DHS system of records titled, "DHS/ICE–015 LeadTrac System of Records." This new system of records is being created from a previously issued system of records, DHS/ICE 009–External Investigations SORN. 73 FR 75452 (Dec. 11, 2008). This system of records allows DHS to collect and maintain records gathered by and in the possession of U.S. Immigrations and Customs Enforcement (ICE), Homeland Security Investigations (HSI), Counterterrorism and Criminal Exploitation Unit (CTCEU) and ICE field offices for appropriate enforcement action, used in the course of their duties in identifying, investigating, and taking enforcement action against foreign students, exchange visitors, and other non-immigrant visitors to the United States who overstay their period of admission or otherwise violate the terms of their visa, immigrant, or non-immigrant status (collectively, status violators) through the LeadTrac system. This SORN also allows DHS to collect information in LeadTrac about organizations such as schools, universities, and exchange visitor programs being investigated by CTCEU and information about individuals, including designated school officials (DSOs), and associates of suspected status violators.

Additionally, DHS/ICE is issuing a Notice of Proposed Rulemaking to exempt this system of records from certain provisions of the Privacy Act, elsewhere in the **Federal Register**. This newly established system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before September 8, 2016.This new system will be effective September 8, 2016.

ADDRESSES: You may submit comments, identified by docket number DHS–2016–0053 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, please visit *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Amber Smith, Privacy Officer, (202) 732–3300, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Mail Stop 5004, Washington, DC 20536, email: *ICEPrivacy@dhs.gov*. For privacy questions, please contact: Jonathan R. Cantor, (202) 343–1717, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS)/U.S. Immigration and Customs Enforcement (ICE) proposes to establish a new DHS system of records titled, "DHS/ICE–015 LeadTrac System of Records."

This record system allows DHS to collect and maintain information about foreign students, exchange visitors, and other non-immigrant visitors to the United States, as well as associated organizations and individuals, who overstay their period of admission or otherwise violate the terms of their visa, immigrant, or non-immigrant status (collectively, "status violators"). Using the LeadTrac information technology (IT) system, ICE Homeland Security Investigations (HSI), Counterterrorism and Criminal Exploitation Unit (CTCEU) collects PII from key DHS databases and analyzes it to identify suspected status violators. This system of records contains records from Arrival and Departure Information System (ADIS), Student and Exchange Visitor Information System (SEVIS), Enforcement Integrated Database (EID/ENFORCE), TECS, Consular Consolidated Database (CCD), Computer—Linked Application Information Management System (CLAIMS 3), Automated Biometric Identification System (IDENT), and from commercial databases and public sources. CTCEU will also use LeadTrac to collect information about organizations such as schools, universities, and exchange visitor programs being investigated by CTCEU, and information about individuals, including designated school officials (DSOs) and associates of suspected status violators.

ICE collects information in LeadTrac about suspected status violators and organizations to help enforce compliance with U.S. immigration laws. Specifically, the information is collected and used to support the following DHS activities: Investigating and determining immigration status of individuals; identifying fraudulent schools and/or organizations and the people affiliated with those schools or organizations; providing HSI and Enforcement and Removal Operations (ERO) with information to further investigate suspected status violators; and carrying out the required enforcement activity.

Some of the individuals about whom ICE collects information in LeadTrac, such as DSOs and associates of suspected status violators, may have lawful permanent resident (LPR) status or be U.S. citizens. CTCEU and Overstay Analysis Unit (OAU) personnel query a variety of DHS and non-DHS information systems and enter the results into LeadTrac to build a unified picture of an individual's entry/exit, visa, criminal, and immigration history, and will comparably process information about associated individuals and organizations. Using this assembled information, CTCEU personnel will determine which individuals and organizations warrant additional investigation for possible

status violations or the operation of fraudulent institutions, and will request that the appropriate HSI field offices initiate investigations.

Consistent with the Department's information sharing mission, information stored in the DHS/ICE–015 LeadTrac System of Records may be shared with other DHS components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS/ICE may share information with appropriate Federal, State, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

Additionally, DHS/ICE is issuing a Notice of Proposed Rulemaking to exempt this system of records from certain provisions of the Privacy Act, elsewhere in the **Federal Register**. This newly established system will be included in the Department of Homeland Security's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records

Department of Homeland Security (DHS)/U.S. Immigration Customs Enforcement (ICE)–015.

SYSTEM NAME:

DHS/ICE–015 LeadTrac System of Records.

SECURITY CLASSIFICATION:

Unclassified; Law Enforcement Sensitive.

SYSTEM LOCATION:

DHS/ICE maintains records at the U.S. Immigration and Customs Enforcement (ICE) Headquarters in Washington, DC and field offices. Specifically, all records are maintained in the LeadTrac information technology (IT) system, except an extract of records from the legacy LeadTrac system that is maintained in an archived electronic form and stored at the National Archives and Records Administration's (NARA) Federal Records Center.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include: (1) Individuals who are suspected of overstaying their period of admission, have had their visa revoked, or otherwise violate the terms of their visa, immigrant, or non-immigrant status (suspected status violators). This includes foreign students, exchange visitors, dependents, and other visitors to the United States; (2) associates of suspected status violators, including family members and employers, who may include U.S. citizens; (3) Designated School Officials (DSOs) and other individuals involved in the operation of suspected status violators' institutions; and (4) Chief executives and legal counsel of Student and Exchange Visitor Program (SEVP)-certified schools, and designated exchange visitor sponsors.

CATEGORIES OF RECORDS IN THE SYSTEM:

For individuals who are suspected status violators:

(1) Biographic and other identifying information, to include but not limited to names, dates of birth, countries of birth, countries of citizenship, gender, Social Security number (SSN), financial information, and vehicle information;

(2) Travel-related data, such as passport and visa information and other information related to entry and exit of the United States;

(3) Education data, which may include program of study, school name, school type, school address, school telephone number, school code, enrollment information, Student and Exchange Visitor Information System (SEVIS) certification date, accreditation information, and school operating authority; and

(4) DHS immigration benefit applications data filed with U.S. Government agencies, and data concerning matriculation at a U.S. college or university, employment, civil litigation, and/or criminal history.

For a suspected status violator's associates and family members: Names, dates of birth, contact information, and other identifying numbers.

For school and exchange visitor officials: Names, SEVIS ID numbers, aliases, gender, dates of birth, countries of birth and citizenship, contact information, and identifying numbers, which may include, but are not limited to alien number and passport number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pursuant to the Homeland Security Act of 2002 (Pub. L. 107–296, Nov. 25, 2002), the Secretary of Homeland Security has the authority to enforce numerous federal criminal and civil laws. These include, but are not limited to, laws residing in titles 8, 18, 19, 21, 22, 31, and 50 of the U.S.C. The Secretary delegated this authority to ICE in DHS Delegation Number 7030.2, Delegation of Authority to the Assistant Secretary for the Bureau of Immigration and Customs Enforcement and the Reorganization Plan Modification for the Department of Homeland Security (January 30, 2003).

PURPOSE(S):

LeadTrac is owned by the U.S. Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI) Counterterrorism and Criminal Exploitation Unit (CTCEU). The purpose of this system is to identify and vet visitors to the United States who overstay their period of admission or otherwise violate the terms of their visa, immigrant or non-immigrant status. LeadTrac also vets, collects, and maintains information on organizations such as schools, universities, and exchange visitor programs being investigated by CTCEU.

Specifically, the information is collected and used to support the following DHS activities: Investigating and determining immigration status and criminal history information about individuals and carrying out the required enforcement activity; determining the likelihood of, or confirming a suspected violator's continued presence within the United States and assessing the associated risk level; identifying fraudulent schools and/or organizations and the people affiliated with those schools or organizations; and providing HSI and Enforcement and Removal Operations (ERO) with information to further investigate suspected status violators and carry out the required enforcement activity.

This system of records also supports the identification of potential criminal activity, immigration violations, and

threats to homeland security. The system is used to uphold and enforce the law, and to ensure public safety.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the DOJ, including Offices of the United States Attorneys, or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when disclosure is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee or former employee of DHS in his/her official capacity;

3. Any employee or former employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the request of the individual to whom the record pertains.

C. To NARA or the General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise, there is a risk of identity theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To appropriate Federal, State, local, tribal, territorial, international, or foreign law enforcement agencies or other appropriate authorities charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, rule, regulation, or order, which includes criminal, civil, or regulatory violations, and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To Federal, State, local, tribal, territorial, foreign or international agencies, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or the issuance, grant, renewal, suspension, or revocation of a security clearance, license, contract, grant, or other benefit; or if the information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit.

I. To Federal, State, local, tribal, territorial, international, or foreign criminal, civil, or regulatory law enforcement authorities when the information is necessary for collaboration, coordination, and de-confliction of investigative matters, prosecutions, and/or other law enforcement actions to avoid duplicative or disruptive efforts and to ensure the safety of law enforcement officers who may be working on related law enforcement matters.

J. To international, foreign, intergovernmental, and multinational government agencies, authorities, and organizations in accordance with law and formal or informal international arrangements.

K. To Federal, State, local, tribal, territorial, foreign government agencies or organizations, or international organizations, lawfully engaged in collecting law enforcement intelligence, whether civil or criminal, to enable these entities to carry out their law enforcement responsibilities, including the collection of law enforcement intelligence.

L. To an organization or individual in either the public or private sector, either foreign or domestic, when there is a reason to believe that the recipient is or could become the target of a particular terrorist activity or conspiracy, to the extent the information is relevant to the protection of life or property.

M. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate to the proper performance of the official duties of the officer making the disclosure.

N. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of DHS, or when disclosure is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

DHS/ICE stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, and digital media.

RETRIEVABILITY:

DHS/ICE may retrieve records by biographic information, identifying numbers, and by other key data elements contained in the system.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including

all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permission.

RETENTION AND DISPOSAL:

Under the NARA-approved records retention schedule for LeadTrac, records must be retained for 75 years. ICE intends to request NARA approval to retain LeadTrac records for 25 years from the date the record was created. Under this schedule, records would be kept as active in LeadTrac for 20 years, and archived for an additional five-year period. After the 25-year period, the information would be destroyed or, if deemed necessary, retained further under a reset retention schedule.

SYSTEM MANAGER AND ADDRESS:

Section Chief, Counterterrorism and Criminal Exploitation Unit (CTCEU), Homeland Security Investigations, U.S. Immigration and Customs Enforcement, 1515 Wilson Boulevard, Arlington, VA 22209.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to ICE's Freedom of Information Act (FOIA) Officer or the Chief Privacy Officer whose contact information can be found at *http://www.dhs.gov/foia* under "Contacts." If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, you should:

- Explain why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records.

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without the above information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

Individuals who wish to contest the accuracy of records in this system of records should submit these requests to the ICE Office of Information Governance and Privacy. Requests must comply with verification of identity requirements set forth in Department of Homeland Security Privacy Act regulations at 6 CFR 5.21(d). Please specify the nature of the complaint and provide any supporting documentation. By mail (please note substantial delivery delays exist): ICE Office of Information Governance and Privacy, 500 12th Street SW., Mail Stop 5004, Washington, DC 20536. By email: *ICEPrivacy@ice.dhs.gov*. Please contact the Office of Information Governance and Privacy with any questions about submitting a request or complaint at 202–732–3300 or *ICEPrivacy@ice.dhs.gov*.

RECORD SOURCE CATEGORIES:

Records are obtained from key DHS systems of records to include but not limited to:

- Arrival and Departure Information System (ADIS). 80 FR 72,081 (November 18, 2015).
- Student and Exchange Visitor Information System (SEVIS). 75 FR 412 (January 5, 2010).
- Enforcement Integrated Database (EID/ENFORCE). 80 FR 24,269 (April 30, 2015).
- TECS (not an acronym). 73 FR 43,457 (July 25, 2008).
- Benefits Information Systems (BIS). 73 FR 56,596 (September 29, 2008).
- Automated Biometric Identification System (IDENT). 72 FR 31,080 (June 5, 2007).

Records are also obtained from the U.S. Department of State's Consular Consolidated Database (CCD) (77 FR 65,245 (Oct. 25, 2012)), commercial databases, and public sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(j)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3), (c)(4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8); (f); and (g). Additionally, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(2) has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3), (c)(4); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). When a record received from another system has been exempted in that source system under 5 U.S.C. 552a(j)(2) or (k)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions set forth here.

Dated: August 3, 2016.

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2016–18810 Filed 8–8–16; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5913–N–17]

60-Day Notice of Proposed Information Collection: Energy Benchmarking OMB Control No.: 2502–NEW

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comment Due Date:* October 11, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Stan Houle, Office of Multifamily Housing Programs, Department of Housing and Urban Development, 451 7th Street SW., Room 10139, Washington, DC 20410, telephone 202–708–3054. (This is not a toll-free number.) Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The President's Climate Action Plan

The President's Climate Action Plan calls on Federal agencies to rapidly increase investments in energy productivity, eliminate energy waste, ramp up efficiency standards, and deploy the tools and technology needed to build a new energy economy. The residential building sector is responsible for fully 21 percent of the nation's greenhouse gas emissions. Utility costs (energy and water) account for around 22 percent of public housing operating budgets and a similar share in the assisted housing sector. HUD spends an estimated $6.4 billion annually to cover the costs of utilities in its public and assisted housing programs.[1]

HUD is committed to creating energy-efficient, water-efficient, and healthy housing as part of a broader effort to foster the development of inclusive, sustainable, and resilient communities. Investments in energy-efficiency and water-efficiency pay dividends by improving occupant comfort, reducing tenant turnover, stabilizing operating costs, alleviating taxpayer burden, preserving affordable housing, ensuring disaster resilience, and mitigating climate change. As such, the Office of Multifamily Housing Programs in HUD's Office of Housing has taken several steps to encourage greater energy and water efficiency in multifamily housing, including:

- Updating and standardizing the utility allowance methodology for assisted properties that must submit annual documentation of utility allowances (estimated 70 percent of portfolio); [2] (See Section "Other PRA Collections that Impact this Submission" for more information on how other previously approved PRA collections relate to Energy Benchmarking.)
- Offering incentives to multifamily owners and management agents who have joined the Better Buildings Challenge, set a goal of reducing energy and/or water use by 20 percent within 10 years, and established themselves as leaders in the field with respect to energy and/or water efficiency; [3]
- Providing access to capital to make energy improvements by implementing changes to the Federal Housing Administration's (FHA) underwriting standards in the Multifamily Accelerated Processing Guide (MAP Guide) to allow greater loan proceeds from standard offerings, supporting products such as the Fannie Mae Green Preservation Plus loan, and affirming how owners may use reserve for replacement funds to make energy and/or water improvements; [4] (See Section "Other PRA Collections that Impact this Submission" for more information on how other previously approved PRA collections relate to Energy Benchmarking.)
- Lowering annual multifamily mortgage insurance premiums for energy-efficient properties (those committed to achieving an industry-recognized green building standard and to maintaining energy performance in the top 25 percent of multifamily buildings nationwide);
- Developing and implementing a standardized Capital Needs Assessment suite of online tools (CNA e-Tool) available (later in 2016) for free to assist borrowers with submitting standard information to HUD, the U.S. Department of Agriculture, and others; [5]
- Developing a "pay for success" demonstration program under which the Department will execute budget-neutral, performance-based agreements that result in a reduction in energy or water costs. Recent legislation authorized HUD to implement this pilot from FY 2016 to FY 2019 in up to 20,000 units of multifamily buildings participating in the PBRA, Sec. 202 and Sec. 811 programs; and
- Publishing guidance on utilizing Property Assessed Clean Energy (PACE) financing with HUD-assisted and FHA-insured properties.

Accounting for Energy and Water Usage

While HUD has a vested interest in eliminating energy and water waste in the assisted housing stock and stabilizing operating costs in both the insured and assisted housing stocks, to ensure that taxpayer investments in multifamily housing are viable for the long-term, the Office of Multifamily Housing Programs is currently unable to effectively analyze the energy and water use patterns, improvement potential, and investment needs of properties in the assisted and insured portfolios.

In 2003 and 2008, the Harvard Graduate School of Design [6] and the Government Accountability Office,[7] respectively, strongly recommended that HUD require the practice of utility benchmarking across its housing portfolios. Utility benchmarking involves tracking the utility consumption of a development on an on-going basis, calculating the energy

[1] See *https://portal.hud.gov/hudportal/documents/huddoc?id=afrfy13_egyeff.pdf.*

[2] See *http://portal.hud.gov/hudportal/documents/huddoc?id=15-04hsgn.pdf.*

[3] See *https://www4.eere.energy.gov/challenge/home.*

[4] See *http://www.fanniemae.com/portal/about-us/media/corporate-news/2014/6117.html.*

[5] See Form HUD–9001a–ORCF at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/forms/hud9.*

[6] See *http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_9238.pdf.*

[7] See *http://www.gao.gov/products/GAO-09-46.*

and water efficiency of the development, and comparing its efficiency to similar developments. It is a valuable tool in the strategic management of building portfolios. As such, a growing number of municipal and state governments across the country are instituting utility benchmarking requirements across the country in order that government policymakers, funding providers, and building owners alike can make data-driven decisions.

Though obstacles remain, utility benchmarking is rapidly becoming quicker, easier, more automated, and more integrated as it becomes an industry-standard best practice. In September 2014, the U.S. Environmental Protection Agency (EPA) developed a new feature for its free, web-based tool called ENERGY STAR Portfolio Manager, which allows users to calculate an energy-efficiency rating or "benchmarking score" for most multifamily developments. Benchmarking scores developed through ENERGY STAR Portfolio Manager are officially known as ENERGY STAR Scores. These scores are available for multifamily housing properties of 20 units or more. A score of 50 indicates energy performance consistent with the national median, while 100 represents a top performer, and a score of at least 75 may make buildings eligible for ENERGY STAR certification.[8] The EPA will release a similar benchmark score for water usage in approximately a year. With these advancements, building owners across the country now have access to a free tool for utility benchmarking that can be used without the need to hire a building professional.

A Deeper Look at Utility Benchmarking

Utility benchmarking helps building owners to understand their buildings' energy and water performance, allowing them to detect malfunctioning equipment and billing errors, prioritize operational and capital improvements, verify the return on those investments, and plan future budget needs. Indeed, the practice of utility benchmarking leads to significant improvements in building performance. Based on analysis of more than 35,000 buildings covered by newly established local energy benchmarking laws, EPA found an average energy use reduction of seven percent between 2008 and 2011.[9]

In addition to the direct benefits to building owners, the sharing of utility benchmarking data allows government policymakers and funding providers (in this case, HUD acts as both) to account for utility expenditures, plan future budget needs, develop efficiency incentive programs, offer targeted technical assistance, and verify the return on these investments. For over 30 years, HUD has been promoting energy- and water-efficiency work in the public and assisted housing stocks through financial incentives, technical assistance, and pledge programs. However, utility benchmarking and data sharing will allow HUD for the first time to use robust information to direct those financial incentives, technical assistance, and pledge programs to the areas of greatest need, opportunity, and success.

Utility consumption and cost tracking by a building owner is the first step of utility benchmarking, and multiple approaches to this are available. The most direct method is to request whole-building utility data directly from the utility provider(s), covering the sum of owner-paid and tenant-paid accounts. When that is not possible, building owners may collect utility data for owner-paid accounts simply by compiling the information from their electronic or paper utility bills into a spreadsheet or web-based tool like ENERGY STAR Portfolio Manager. Some utility providers offer easy downloads of this information directly from their Web sites.

Building owners may then collect utility data for tenant-paid accounts either by requesting the information directly from tenants in accordance with existing lease provisions, or, in some cases, by submitting individual tenant-data release forms to the utility provider. Once received, this utility data should be added to the spreadsheet or web-based tool to offer a complete picture of the whole-building utility consumption and cost. If using ENERGY STAR Portfolio Manager, (OMB 2060–0347) the software will then automatically calculate a variety of useful metrics, such as the Site and Source Energy Use Intensity (EUI), Site Water Use Intensity (WUI), ENERGY STAR Score for Energy, and ENERGY STAR Score for Water. With this information, building owners are empowered to make more strategic decisions.

Cities across the country have enacted utility benchmarking and data sharing ordinances that ask commercial and multifamily building owners to track and disclose energy and/or water usage. Each program has unique building size requirements and different disclosure procedures.

At this time and with this notice, HUD is proposing limited requirements for utility benchmarking and data sharing, in order to balance the need to institute contemporary best practices and strategically manage the housing portfolio with the burden presented to building owners of adopting a new reporting requirement. Whereas an increasing number of state and local laws require utility benchmarking on an annual basis, HUD is proposing "spot-check" utility benchmarking on a less frequent basis. And whereas state and local benchmarking laws generally require utility benchmarking based on whole-building data, HUD intends to accept metrics developed with sampled tenant-paid utility data when whole building data are not available. Together, this will allow building owners to begin practicing utility benchmarking while the market continues to build support for more integration and automation of this best practice.

Over time, the Department will use the scores, along with EUI and WUI metrics, to see if energy and water efficiency is increasing, decreasing, or staying the same in the multifamily portfolio. The Office of Multifamily Housing Programs will use the information to assess energy and/or water efficiency needs and opportunities in the portfolio. Benchmarking data may also be used to inform the development of new policy initiatives, financial incentives, technical assistance, and pledge programs. Energy benchmarking will become more valuable over time as multiple years of energy consumption data are available.

II. Proposed Information Collection

To build a foundation of awareness and data concerning the current building performance of the multifamily building stock, as well as to guide and spur energy- and water-efficiency investments in multifamily housing, HUD proposes, through this notice, to require owners of covered property types to provide HUD's Office of Multifamily Housing Programs with the following metrics for each property when completing several types of property transactions: Site and Source

[8] See *http://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/use-portfolio-manager.* See also former HUD Secretary Shaun Donovan's July 17, 2014, letter to Property Owners and Operators participating in HUD programs encouraging the use of EPA's ENERGY STAR Portfolio Manager at *http://portal.hud.gov/hudportal/documents/huddoc?id=SOHUDSignedLetterPHAsMFH.pdf.*

[9] See *http://www.energystar.gov/sites/default/files/buildings/tools/DataTrends_Savings_20121002.pdf.*

Energy Use Intensities (EUI), Site Water Use Intensity (WUI), and the ENERGY STAR Score for Energy, and—when available from EPA—the Energy Star Score for Water. The Portfolio Manager software calculates and reports these metrics in a standardized format. The Energy Star Score for Water is currently pending release by EPA, and so it will not be required until it is available. HUD will provide at least 90 days advance notice before a requirement to submit water efficiency data goes into effect.

Site EUI represents a property's energy use per square foot of gross floor area, expressed in thousand British thermal units per square foot (kBTU/ft^2), a standardized measure of thermal power consumption regardless of fuel source. Source EUI includes an adjustment to reflect how the energy was produced and transmitted, and this metric is calculated by Energy Star Portfolio Manager and used as the basis for the Energy Star Score for Energy. Site WUI represents a property's water use per square foot of gross floor area, expressed in gallons per square foot (gal/ft^2). The Energy Star Score for Energy and Water each serve as a ranking of a property's Source EUI and Site WUI, respectively, compared to similar properties.

There are a few exceptions to the stated information collection requirements. Only properties that have been in existence for at least 12 months and that include 20 housing units or more are eligible to receive an Energy Star Score for Energy or Water, and so these two metrics will not be required for ineligible properties. Properties with less than 20 units are encouraged to submit EUI and WUI data, but will not be not required to submit this analysis to HUD.

Additionally, for the purposes of this basic information collection effort, the Office of Multifamily Housing Programs will accept metrics calculated using either whole building data or a combination of whole owner-paid utility data and sampled tenant-paid utility data. It is important to understand, however, that metrics calculated with less than whole building data are not accepted by EPA for the purposes of Energy Star certification. If choosing to use sampled tenant-paid utility data, owners must meet or exceed the standards outlined in this document.

Finally, for the Department's purposes, the required metrics will be considered valid for three years beyond the 12-month period upon which they are based. For example, an ENERGY STAR Score based on 2015 calendar-year utility data and generated in 2016 will be accepted by HUD for any required reporting under this notice in 2016, 2017, and 2018. An ENERGY STAR Score based on 2013 calendar-year data and generated in 2016 will be accepted by HUD for any required reporting under this notice in 2016, but not in 2017. At this point, the owner would need to provide more recent data. The frequency is intended to align benchmarking with information collection efforts undertaken by HUD-assisted properties in preparing their utility allowance.

Covered property types include:

- Section 202 Project Rental Assistance Contracts (PRAC),[10]
- Section 811 PRAC and Project Rental Assistance (PRA) contracts,[11]
- Section 8 Housing Assistance Payment (HAP) contracts,[12]
- Multifamily Housing properties insured under Sections 223(a)(7), 223(f), 221(d)(4), 220, 230, and 241(a)).[13]

Owners of covered properties are encouraged to voluntarily submit water and energy benchmarking data to HUD on an annual basis. HUD will require that owners submit benchmarking information on the following schedule, subject to revision:

- For HUD assisted properties with a utility allowance, at the time of a triennial utility allowance baseline calculation;
- For HUD-assisted properties where there is no utility allowance, every third year at the time of financial statement submission;
- Prior to issuance of new FHA mortgage insurance under Sections 223(a)(7), 223(f), nd 241(a));
- With a Capital Needs Assessment submission required by the Office of Asset Management and Portfolio Oversight in HUD's Office of Multifamily Housing Programs on a 10-year cycle;
- With a Capital Needs Assessment submission required as part of any enforcement action.

HUD is seeking feedback on the required submission points and will finalize the schedule with the issuance of an Office of Housing Notice.

Required Format

As noted above, owners seeking a covered property transaction will be required to enter data into ENERGY STAR Portfolio Manager and submit to HUD the referenced metrics created by the free web tool. ENERGY STAR Portfolio Manager has the ability to automatically generate reports from user data and offers a variety of standard formats. HUD will use an existing standard, machine readable report format within Portfolio Manager for HUD owners to utilize in preparing its benchmarking submission. The format may be modified over time but content will remain consistent with the scope of this Notice. In addition to submission of data in the specified format, owners may be asked to "share" their benchmarking report with the HUD account in Portfolio Manager to allow the Department to centrally access data.

Requirements for Underlying Utility Data

Use of whole building data, including owner-paid utilities, plus all tenant paid utilities (even if aggregated), is preferable when completing utility benchmarking analysis, as it will give the most accurate snapshot of a building's performance. However, to calculate the referenced metrics in Portfolio Manager, some owners may need to or choose to use a combination of whole owner-paid utility data and a sample of tenant-paid utility data as an alternative to using all of the above. Please be reminded that metrics calculated with less than whole building data are not accepted by EPA for the purposes of ENERGY STAR certification. If choosing to use sampled tenant-paid utility data, owners must meet or exceed the minimum sampling standards associated with existing Office of Multifamily Housing utility data reporting requirements (see table of related PRA collections below). Accepting the sampling already in use by anticipated respondents will significantly minimize the additional administrative burden benchmarking requirements imposes on those respondents.

When completed in conjunction with a HUD utility allowance baseline analysis, the benchmarking analysis should generally include (or exceed) the number of units sampled for the utility

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[10] Under HUD's regulations for the Section 202 and Section 811 programs at 24 CFR 891.400(d)(2) Owners are required to submit "statements regarding project operation, financial conditions and occupancy as HUD may require to administer the PRAC and to monitor project operations

[11] *Id.*

[12] Under HUD's Section 8 Project-Based Rental Assistance (PBRA) program, owners must submit an analysis of the project's utility allowances in connection with annual rent adjustments and ". . . provide to HUD on an annual basis, such financial information as required by HUD . . .". See HUD regulations at 24 CFR 880.610, (applied to parts 881 and 883by cross-reference), 24 CFR 884.220, 24 CFR 886.126, 24 CFR 891.645, and 24 CFR part 5 Subpart H.

[13] Under HUD's regulations at 24 CFR 200.78, insured properties "shall provide cost effective energy conservation in accordance with requirements established by" HUD.

allowance (see Notice H 2015–14 [14]). In other instances, the Department will accept analysis using sampled tenant data that meets or exceeds the lighter sampling protocol adopted by the Department of Energy's Better Buildings Challenge (BBC). [15] HUD may establish a different standard for submittals associated with Capital Needs Assessments (CNA) or green building financing programs. In all cases, owners are encouraged to collect as much utility data as possible and to sample from a variety of housing unit sizes and types within each development in order to improve the accuracy and usefulness of the resultant metrics. Owners must certify that the submitted Portfolio Manager data meets or exceeds the required minimum sample.

HUD will consider requests for additional time to submit benchmarking data from owners who experience unexpected delays in obtaining sufficient sample data from utility providers or encounter unforeseeable technical difficulties.

Other PRA Collections That Impact This Submission

The Department has identified seven discrete tasks associated with the process for obtaining and submitting Portfolio Manager scores, which are listed in the matrix below. Based on a review of other Paperwork Reduction Act submissions, the Department believes that the PRA requirements for seven of those eight tasks are addressed in other submissions, also identified in the matrix below. Burden hours calculated for the proposed Information Collection reflect only the time associated with generating a report in Portfolio Manager and submission to HUD. While the Department recognizes that respondents may spend significant time on preparatory activities in order to submit the data requested under this collection, the burden hours for those tasks are already accounted for under other approved collections.

	Relevant PRA information collections				HUD's Multifamily Housing Utility Allowance submission (OMB 2502–0352)	Benchmarking (new collection)
	Energy Star collection (OMB–2060–0347)	eCNA collection (OMB–2502–0505)	TRACS collection (Utility allowance component) (OMB–2502–0204)	Multifamily Project Applications Green Building Program component (OMB–2502–0029)		
Tasks Leading to Fulfillment of Requirement:						
Tenants submit utility data to owners	.....	X	X	.....	X	.....
Tenants provide release for owner to request data from utility	.....	X	X	.....	X	.....
Utilities compile and share data with owners	X	*	*	.....	*	.....
Owners compile/prepare tenant-paid utility data	X	*	*	.....	*	.....
Owners compile/prepare owner-paid utility data	X	*	.....	X	.....	.....
Owners enter data into Portfolio Manager	X	*	*	.....	.....	.....
Direct Requirement Being Proposed.						
Owners generate Portfolio Manager Report and submit to HUD	.....	.....	.....	.....	.....	X

* In conjunction with FHA financing and Utility Allowance processes, a portion of owners are currently compiling utility consumption data and utilizing Portfolio Manager.

Effective Date

The utility benchmarking requirement described in this notice will apply when executing any covered transaction beginning 90 days after OMB approval of the PRA request, and not sooner than January 1, 2017. The first scheduled submission date for a majority of assisted-housing respondents is estimated to occur in 2019. HUD will alert owners of the effective date for reporting requirements through an Office of Housing Notice, issued after OMB issues a Notice of Action approving this PRA collection.

III. Information Collection Burden and Solicitation of Comment

A. Overview of Information Collection

Title of Information Collection: Multifamily Housing Energy Benchmarking.

OMB Approval Number: New proposed collection.

Type of Request: New proposed collection.

Form Number: N/A.

Description of the need for the information and proposed use: Please see Section II of this notice.

Respondents: Multifamily owners, managing agents and tenants.

Estimated Number of Respondents: 17,049.

Average Hours per Response: .50.

Total Estimated Burden Hours: 8,524.5.

Burden hours take into account other existing information collections covering the assembly of utility information by impacted properties and the use of ENERGY STAR Portfolio Manager, these include: HUD's Multifamily Housing Utility Allowance submission (OMB 2502–0352), HUD's Tenant Eligibility and Rent Procedures (OMB 2502–0204), CNAe requirements (OMB 2502–0505), HUD's Multifamily Project Applications Green Building Program component (OMB–2502–0029)and ENERGY STAR Certification (OMB- 2060–0347) by the Environmental Protection Agency.

[14] *https://portal.hud.gov/hudportal/documents/huddoc?id=15-04hsgn.pdf.*

[15] See Appendix C of the BBC Data Tracking Manual.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: August 3, 2016.

Janet M. Golrick,

Associate General Deputy Assistant Secretary for Housing-Associate Deputy Federal Housing Commissioner.

[FR Doc. 2016–18877 Filed 8–8–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5913–N–16]

60-Day Notice of Proposed Information Collection: HUD-Owned Real Estate Sales Contract and Addendums

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* October 11, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Ivery W. Himes, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Ivery W. Himes at *Ivery.W.Himes@hud.gov* or telephone 202–708–1672, option 3. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Himes.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: HUD-Owned Real Estate Sales Contract and Addendums.

OMB Approval Number: 2502–0306.

Type of Request: Revision.

Form Numbers: HUD–9544, HUD–9548, HUD–9548–B, HUD–9548–C, HUD–9548–G, HUD–9548–H, HUD–9545–Y, HUD–9545–Z, SAMS–1101, SAMS–1103, SAMS–1108, SAMS–1110, SAMS–1111, SAMS–1111–A, SAMS–1117, SAMS–1120, SAMS–1204, SAMS–1205.

Description of the need for the information and proposed use: This collection of information consists of the sales contracts and addenda that will be used in binding contracts between purchasers of acquired single-family assets and HUD.

Respondents: Business or other for profit.

Estimated Number of Respondents: 14,082.

Estimated Number of Responses: 140,989.

Frequency of Response: On occasion.

Average Hours per Response: 5–30 minutes.

Total Estimated Burdens: 50,275.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: August 3, 2016.

Janet M. Golrick,

Associate General Deputy Assistant Secretary for Housing, Associate Deputy Federal Housing Commissioner.

[FR Doc. 2016–18876 Filed 8–8–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2016–N123; FXES11130300000–167–FF03E00000]

Endangered and Threatened Wildlife and Plants; Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications for a permit to conduct activities intended to enhance the survival of endangered or threatened species. Federal law prohibits certain activities with endangered species unless a permit is obtained.

DATES: We must receive any written comments on or before September 8, 2016.

ADDRESSES: Send written comments by U.S. mail to the Regional Director, Attn: Carlita Payne, U.S. Fish and Wildlife Service, Ecological Services, 5600

American Blvd. West, Suite 990, Bloomington, MN 55437–1458; or by electronic mail to *permitsR3ES@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Carlita Payne, (612) 713–5343.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*), prohibits certain activities with endangered and threatened species unless the activities are specifically authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A permit granted by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of propagation or survival, or interstate commerce (the latter only in the event that it facilitates scientific purposes or enhancement of propagation or survival). Our regulations implementing section 10(a)(1)(A) of the ESA for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Applications Available for Review and Comment

We invite local, State, Tribal, and Federal agencies and the public to comment on the following applications. Please refer to the permit number when you submit comments. Documents and other information the applicants have submitted with the applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit Applications

Proposed activities in the following permit requests are for the recovery and enhancement of survival of the species in the wild.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE217351	U.S. Department of Agriculture (USDA)—Forest Service, Nelsonville, OH.	Indiana bat (*Myotis sodalis*), northern long-eared bat (*Myotis septentrionalis*), gray bat (*Myotis grisescens*).	OH, KY, IL	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Capture, handle, radio-tag, release.	Amend, renew.
TE03495B	Kristina Hammond, Cheyenne, WY.	Indiana bat, northern long-eared bat.	Rangewide	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Capture, handle, radio-tag, release.	Amend, renew.
TE64238B	Jocelyn Karsk, Ball State University, Muncie, IN.	Indiana bat, northern long-eared bat.	Rangewide	Conduct presence/absence, migration, and telemetry surveys.	Capture, handle, radio-tag, release.	Amend.
TE10887A	U.S. Geological Survey, Chesterton, IN.	Karner blue butterfly (*Lycaeides melissa samuelis*).	WI	Establish captive colony for climate change research.	Capture, collect, obtain eggs, maintain/rear in captivity.	Amend, renew.
TE77313A	Egret Environmental Consulting, LLC.	Indiana bat, northern long-eared bat, gray bat, Hine's emerald dragonfly (*Somatochlora hineana*).	Rangewide	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	capture, handle, radio-tag, release.	Amend.
TE31355B	Brooke Hines, Paris, KY.	Indiana bat, northern long-eared bat, gray bat, Virginia big-eared bat (*Plecotus townsendii virginianus*), Ozark big-eared bat (*Plecotus townsendii ingens*).	Rangewide	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Capture, handle, radio-tag, release.	Amend, renew.
TE049738	Third Rock Consultants, LLC, Lexington, KY.	Indiana bat, northern long-eared bat, gray bat, Virginia big-eared bat, Ozark big-eared bat, American burying beetle (*Nicrophorus americanus*), 18 fish species, and 50 mussel species.	AL, FL, GA, IA, IL, IN, KY, MI, MO, MS, NC, OH, SC, TN.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Capture, handle (bats); harass (mussels and fish); capture, handle, release (beetle).	Amend, renew.
TE98294A	Normandale Associates Inc., Stowe, PA.	Indiana bat, northern long-eared bat.	IL, IN, IA, MI, MN, MO, OH, WI.	Conduct presence/absence surveys.	Capture, handle, radio-tag, release.	Amend, renew.
TE01322C	USDA—Forest Service, Northern Research Station, Rhinelander, WI.	Indiana bat, northern long-eared bat.	Rangewide	Conduct presence/absence surveys, conduct population monitoring, conduct white-nose syndrome research.	Capture, handle, radio-tag, band, collect samples, release.	New.
TE01320C	Kristi Confortin, Ball State University, Muncie, IN.	Indiana bat, northern long-eared bat.	IL, IN	Conduct presence/absence surveys, conduct population monitoring, conduct white-nose syndrome research.	Capture, handle, radio-tag, band, collect samples, release, salvage.	New.
TE01311C	Shawn McKinley, Grafton, WV.	Indiana bat, northern long-eared bat, gray bat, Virginia big-eared bat.	OH	Conduct presence/absence surveys.	Capture, band, release.	New.

National Environmental Policy Act

The proposed activities in the requested permits qualify as categorical exclusions under the National Environmental Policy Act, as provided by Department of the Interior implementing regulations in part 46 of title 43 of the CFR (43 CFR 46.205, 46.210, and 46.215).

Public Availability of Comments

We seek public review and comments on these permit applications. Please refer to the permit number when you submit comments. Comments and materials we receive in response to this notice are available for public inspection, by appointment, during normal business hours at the address listed above in **ADDRESSES**.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the ESA (16 U.S.C. 1531 *et seq.*).

Dated: July 29, 2016.

Sean Marsan,

Acting Assistant Regional Director, Ecological Services, Midwest Region.

[FR Doc. 2016–18819 Filed 8–8–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA930000–L14400000–ET0000; CACA 054926]

Notice of Application for Withdrawal and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Forest Service (USFS) has filed an application with the Bureau of Land Management (BLM) requesting that the Secretary of the Interior withdraw approximately 82.5 acres of National Forest System land from location and entry under the United States mining laws, but not leasing under the mineral leasing laws for a 20-year term to protect the recreational resources at the Spanish Creek Campground located in the Plumas National Forest, California. Publication of this notice temporarily segregates the land for up to 2 years from location and entry under the United States mining laws while the withdrawal application is being processed. This notice also gives the public an opportunity to comment on the withdrawal application and to request a public meeting. The land has been and will remain open to such forms of disposition allowed by law on National Forest System land and to mineral leasing, except for location and entry under the mining laws.

DATES: Comments and public meeting requests must be received by November 7, 2016.

ADDRESSES: Comments and meeting requests should be sent to the Mt. Hough Ranger District, 39696 Hwy. 70, Quincy, California 95971, Attention: Leslie Edlund, or emailed to *comments-pacificsouthwest-plumas-mthough@fs.fed.us* with Subject: Spanish Creek Campground Mineral Withdrawal.

FOR FURTHER INFORMATION CONTACT: Elizabeth Easley, BLM California State Office, 916–978–4673 or Donna Duncan, Plumas National Forest, Mt. Hough Ranger District, 530–283–7614 during regular business hours, 8:00 a.m. to 4:30 p.m. Monday through Friday, except holidays. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact either of the above individuals. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The applicant is the USFS. The application requests the Secretary of the Interior to withdraw, subject to valid existing rights, the following described land from location and entry under the United States mining laws, but not from leasing under the mineral leasing laws, for a period of 20 years to protect the recreational resources within the Spanish Creek Campground.

Plumas National Forest

Mount Diablo Meridian

T. 25 N., R. 9 W.,
Sec 15, W½NE¼SW¼, NE¼SW¼SW¼, NW¼SE¼SW¼, W½NE¼SE¼SW¼, E½NW¼SW¼, W½E½NE¼SW¼, S½SE¼SW¼NW¼, and SE¼SW¼SW¼NW¼.

The area described contains approximately 82.5 acres in Plumas County.

The purpose of the requested withdrawal is to protect the recreational resources at the Spanish Creek Campground. The use of a right-of-way, interagency agreement, or cooperative agreement would not adequately constrain non-discretionary uses and would not provide adequate protection of the Federal investment of funds and infrastructure at the Spanish Creek Campground. There are no suitable alternative sites because the land described is the only land that encompasses the Spanish Creek Campground.

No additional water rights need to be acquired to fulfill the purpose of the requested withdrawal.

Records related to the application may be examined by contacting either of the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section above. For a period until November 7, 2016, all persons who wish to submit comments, suggestions, or objections in connection with the withdrawal application may present their views in writing to the BLM California State Office at the address noted above. Comments, including names and street addresses of respondents, will be available for public review at the address indicated above during regular business hours.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us to withhold your personally identifying information from public review, we cannot guarantee that we will be able to do so.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the application for withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the application for withdrawal must submit a written request to the BLM California State director no later than November 7, 2016. If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and a local newspaper at least 30 days before the scheduled date of the meeting.

For a period until August 9, 2018, subject to valid existing rights, the land described in this notice will be segregated from location and entry under the United States mining laws, unless the application is denied or canceled or the withdrawal is approved prior to that date. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary

nature which will not significantly impact the values to be protected by the withdrawal may be allowed with the approval of the authorized officer of the USFS during the temporary segregation period.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

Thomas Pogacnik,

California Deputy State Director.

[FR Doc. 2016–18835 Filed 8–8–16; 8:45 am]

BILLING CODE 4311–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–VRP–REGS–20916; PPWOVPAU0, PPMPSPD1Y.M0000 (166)]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Special Park Use Applications

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service, NPS) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on August 31, 2016. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB Control Number.

DATES: You must submit comments on or before September 8, 2016.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Information Collection Clearance Officer, National Park Service, 12201 Sunrise Valley Dr. (MS–242), Reston, VA 20192 (mail); or *madonna_baucum@nps.gov* (email). Please reference OMB Control Number 1024–0026 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Lee Dickinson, Special Park Uses National Manager, at *lee_dickinson@nps.gov* (email) or 202–513–7092 (telephone). You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under 54 U.S.C. 100101 (National Park Service Act Organic Act), we must preserve America's natural wonders unimpaired for future generations, while also making them available for the enjoyment of the visitor. Meeting this mandate requires that we balance preservation with use. Maintaining a good balance requires both information and limits. In accordance with regulations at 36 CFR parts 1–7, 13, 20, and 34, we issue permits for special park uses.

Special park uses cover a wide range of activities including, but not limited to, special events, First Amendment activities, grazing and agricultural use, commercial filming, still photography, construction and vehicle access. Permits are issued for varying amounts of time based on the requested use, but generally do not exceed 5 years. A new application must be submitted in order to request the renewal of an existing permit.

The information we collect in the special use applications allows park managers to determine if the requested use is consistent with the laws and NPS regulations referenced above and with the public interest. The park manager must also determine that the requested activity will not cause unacceptable impacts to park resources and values. The information is collected from respondents using the following NPS forms:

10–930—Application for Special Use Permit;

10–930s—Application for Special Use Permit (short form);

10–931—Application for Special Use Permit—Commercial Filming/Still Photography Permit (short);

10–932—Application for Special Use Permit—Commercial Filming/Still Photography Permit (long); and,

10–933—Application for Special Use Permit—Vehicle/Watercraft Use.

II. Data

OMB Control Number: 1024–0026.

Title: Special Park Use Applications (portions of 36 CFR 1–7, 13, 20, and 34).

Form Numbers: NPS Forms 10–930—Application for Special Use Permit; 10–930s—Application for Special Use Permit (short form); 10–931—Application for Special Use Permit—Commercial Filming/Still Photography Permit (short); 10–932—Application for Special Use Permit—Commercial Filming/Still Photography Permit (long); and, 10–933—Application for Special Use Permit—Vehicle/Watercraft Use.

Type of Request: Extension of a currently approved collection of information.

Description of Respondents: Individuals or households; not-for-profit entities; businesses or other for-profit entities; and Federal, State, local and tribal governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Total number of annual respondents	Total number of annual responses	Completion time per response (hours)	Total annual hours
Form 10–930:				
Individuals	8,763	8,763	.5	4,382
Private Sector	3,559	3,559	.5	1,780
Government	516	516	.5	258
Form 10–930s:				
Individuals	3,110	3,110	.25	778
Private Sector	1,441	1,441	.25	360
Government	310	310	.25	78
Form 10–931:				
Individuals	412	412	.25	103
Private Sector	1,226	1,226	.25	307
Government	42	42	.25	11
Form 10–932:				
Individuals	109	109	.5	55
Private Sector	945	945	.5	473

Activity	Total number of annual respondents	Total number of annual responses	Completion time per response (hours)	Total annual hours
Government	19	19	.5	10
Form 10–933:				
Individuals	13,050	13,050	.25	3,263
Private Sector	228	228	.25	57
Government	5	5	.25	1
Totals	33,735	33,735		11,916

Estimated Annual Nonhour Burden Cost: $2,530,125 for application fees.

III. Comments

On February 3, 2016, we published in the **Federal Register** (81 FR 5781) a notice of our intent to request that OMB renew approval for this information collection. In that notice, we solicited comments for 60 days, ending on April 4, 2016. No responses were received.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: August 3, 2016.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2016–18836 Filed 8–8–16; 8:45 am]

BILLING CODE 4310–EH–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–540, 542–544 and 731–TA–1283, 1285, 1287, and 1289–1290 (Final)]

Cold-Rolled Steel Flat Products From Brazil, India, Korea, Russia, and the United Kingdom; Supplemental Schedule for the Subject Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: August 3, 2016.

FOR FURTHER INFORMATION CONTACT: Nathanael N. Comly (202) 205–3174), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: Effective March 7, 2016, the Commission established a schedule for the conduct of the final phase of the subject investigations.[1] Subsequently, the Department of Commerce extended the date for its final determinations in the investigations concerning Brazil, India, Korea, Russia, and the United Kingdom to no later than 135 days after the publication of the preliminary determinations.[2] The Department of Commerce's final determinations were published on July 29, 2016.[3] The Commission, therefore, is issuing a supplemental schedule for these investigations.

The Commission's supplemental schedule is as follows: The deadline for filing party comments on Commerce's final determinations is August 9, 2016; the staff report in the final phase of these investigations will be placed in the nonpublic record on August 23, 2016; and a public version will be issued thereafter.

Supplemental party comments may address only Commerce's final determinations regarding imports from Brazil, India, Korea, Russia, and the United Kingdom. These supplemental final comments may not contain new factual information and may not exceed five (5) pages in length.

For further information concerning these investigations see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: August 3, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–18808 Filed 8–8–16; 8:45 am]

BILLING CODE 7020–02–P

[1] 81 FR 15559, March 23, 2016.

[2] 81 FR 11754, March 7, 2016 (Brazil); 81 FR 11741, March 7, 2016 (India); 81 FR 11757, March 7, 2016 (Korea); 81 FR 12072, March 8, 2016 (Russia); and 81 FR 11744, March 7, 2016 (United Kingdom).

[3] 81 FR 49946 (Brazil antidumping duty), 81 FR 49940 (Brazil countervailing duty), 81 FR 49938 (India antidumping duty), 81 FR 49932 (India countervailing duty), 81 FR 49953 (Korea antidumping duty), 81 FR 49943 (Korea countervailing duty), 81 FR 49950 (Russia antidumping duty), 81 FR 49935 (Russia countervailing duty), and 81 FR 49929 (UK antidumping duty).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1016]

Certain Access Control Systems and Components Thereof; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 5, 2016, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of The Chamberlain Group, Inc. of Elmhurst, Illinois. A letter supplementing the complaint was filed on July 19, 2016. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain access control systems and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,161,319 (''the '319 patent''); U.S. Patent No. 7,196,611 (''the '611 patent''); and U.S. Patent No. 7,339,336 (''the '336 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2016).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 3, 2016, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain access control systems and components thereof by reason of infringement of one or more of claims 1–4, 7–12, 15, and 16 of the '319 patent; claims 1, 10–12, and 18–25 of the '611 patent; and claims 7, 11–13, 15–23, and 34–36 of the '336 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: The Chamberlain Group, Inc., 845 Larch Avenue, Elmhurst, IL 60126.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Techtronic Industries Co. Ltd., Unit B–F 24/F CDW Building, 388 Castle Peak Road, Tusen Wan, New Territories, Hong Kong.

Techtronic Industries North America, Inc., 303 International Circle, Suite 4900, Hunt Valley, MD 21030.

One World Technologies Inc., 1428 Pearman Dairy Road, Anderson, SC 29625.

OWT Industries Inc., 225 Pumpkintown Highway, Pickens, SC 29671.

Ryobi Technologies, Inc., 1428 Pearman Dairy Road, Anderson, SC 29625.

Et Technology (Wuxi) Co., Ltd., Xiqun Road (East Section), Xinqu Meicun Industrial Cluster Zone, Wuxi 214112, Zhejiang China.

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: August 3, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–18807 Filed 8–8–16; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Advisory Committees on the Federal Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure

AGENCY: Judicial Conference of the United States, Advisory Committees on the Federal Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure.

ACTION: Notice of proposed amendments and open hearings.

SUMMARY: The Advisory Committees on the Federal Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure have proposed amendments to the following rules and forms:

Appellate Rules: 8, 11, 25, 28.1, 29, 31, 39, and 41, and Form 4

Bankruptcy Rules: 3002.1, 5005, 8002, 8006, 8011, 8013, 8015, 8016, 8017, new Rule 8018.1, 8022, 8023, and new Part VIII Appendix; and Official Forms 309F, 417A, 417C, 425A, 425B, 425C, and 426

Civil Rules: 5, 23, 62, and 65.1
Criminal Rules: 12.4, 45, and 49

The text of the proposed rules and the accompanying Committee Notes are posted on the Judiciary's Web site at: *http://www.uscourts.gov/rules-policies/proposed-amendments-published-public-comment.*

All written comments and suggestions with respect to the proposed amendments may be submitted on or after the opening of the period for public comment on August 15, 2016, but no later than February 15, 2017. Written comments must be submitted electronically, following the instructions provided on the Web site. All comments submitted will be available for public inspection.

Public hearings are scheduled to be held on these proposed amendments as follows:

- Appellate Rules in Washington, DC, on October 17, 2016, and in Denver, Colorado, on January 20, 2017;
- Bankruptcy Rules in Pasadena, California, on January 24, 2017;
- Civil Rules in Washington, DC, on November 3, 2016, in Phoenix, Arizona, on January 4, 2017, and in Dallas/Fort Worth, Texas, on February 16, 2017;
- Criminal Rules in Phoenix, Arizona, on January 4, 2017, and in Washington, DC, on February 24, 2017.

Those wishing to testify must contact the Secretary by email at: *Rules_Support@ao.uscourts.gov,* with a copy mailed to the address below at least 30 days before the hearing.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Womeldorf, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE., Suite 7–240, Washington, DC 20544, Telephone (202) 502–1820.

Dated: August 4, 2016.

Rebecca A. Womeldorf,

Secretary, Committee on Rules of Practice and Procedure, Judicial Conference of the United States.

[FR Doc. 2016–18874 Filed 8–8–16; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting and Hearing Notice No. 7–16]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

Tuesday, August 16, 2016: 10:00 a.m.—Issuance of Proposed Decisions in claims against Iraq.

11:00 a.m.—Issuance of Proposed Decisions in claims against Libya.

Status: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Patricia M. Hall, Foreign Claims Settlement Commission, 600 E Street NW., Suite 6002, Washington, DC 20579. Telephone: (202) 616–6975.

Brian M. Simkin,

Chief Counsel.

[FR Doc. 2016–18947 Filed 8–5–16; 11:15 am]

BILLING CODE 4410–BA–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Modifications of Consent Decree Under the Clean Air Act

On August 3, 2016, the Department of Justice lodged proposed modifications to a Consent Decree with the United States District Court for the Eastern District of Virginia in *United States et al.* v. *Virginia Electric and Power Company,* Civil Case Nos. 1:03–cv–00517 & 1:03–cv–00603 (E.D. Va.).

The original Consent Decree was entered on October 3, 2003, and resolved civil claims under the Clean Air Act at a number of the Defendant's electric-generating facilities located in Virginia and West Virginia. The Consent Decree imposed various pollution control requirements on Defendant's facilities, including requirements related to particulate matter emissions at Defendant's Bremo Power Station located in Fluvanna County, Virginia. The Consent Decree also required the Defendant to fund certain environmental mitigation projects, including certain projects identified by the co-plaintiff States of Connecticut and Virginia.

The parties to the Consent Decree have agreed to certain modifications set forth in three amendments to the Consent. The first amendment modifies the Consent Decree's particulate matter provisions to recognize that the Bremo Power Station no longer burns coal or fuel oil and instead is fired exclusively with natural gas. The second and third amendments modify the Consent Decree's environmental mitigation project provisions to allow the co-plaintiff States of Connecticut and Virginia to use remaining environmental mitigation funds on additional environmental mitigation projects.

The publication of this notice opens a period for public comment on the proposed modifications to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States et al.* v. *Virginia Electric and Power Company,* Civil Case Nos. 1:03–cv–00517 & 1:03–cv–00603 (E.D. Va.), D.J. Ref. No. 90–5–2–1–07122. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov*
By mail	Assistant Attorney General U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611

During the public comment period, the proposed amendments to the Consent Decree may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed amendments upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $3.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section. Environment and Natural Resources Division

[FR Doc. 2016–18797 Filed 8–8–16; 8:45 am]

BILLING CODE 4410–15–P

OFFICE OF MANAGEMENT AND BUDGET

Uniform Administrative Requirements, Cost Principles, and Audit Requirements

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the 2016 OMB 2 CFR 200, Subpart F—Compliance Supplement (Supplement). The notice also offers interested parties an opportunity to comment on the 2016 Supplement. The 2016 Supplement adds two new programs and deletes five programs (that are completed under the American Recovery and Reinvestment Act). It has also been updated for program changes and technical corrections. In addition, it removed two compliance requirements from the standard list of such requirements: Davis Bacon (formerly compliance requirement D) and Real Property Acquisition and Relocation Assistance (formerly compliance requirement K). Part 3—Compliance Requirements is divided into two subparts. Subpart 3.1 is applicable to awards issued prior to December 26, 2014 and Subpart 3.2 is applicable to awards issued on or after December 26, 2014.

The two added programs are:

- CFDA 14.225—Community Development Block Grants/Special Purpose Grants/Insular Areas to form a cluster with CFDA 14.218, Community Development Block Grants/Entitlement Grants.
- CFDA 14.272—National Disaster Resilience Competition (CDBG–NDR) to form a cluster with CFDA 14.269, Hurricane Sandy Community Development Block Grant Disaster Recovery Grants (CDBG–DR).

The five deleted programs are:

- CFDA 11.010—Community Trade Adjustment Assistance.
- CFDA 14.880—Family Unification Program (FUP).
- CFDA 14.257—Homelessness Prevention and Rapid Re-Housing Program (HPRP) (Recovery Act Funded).
- CFDA 81.128, Energy Efficiency and Conservation Block Grant Program.
- CFDA 84.388—School Improvement Grants, Recovery Act.

Part 6—Internal Control was updated to be consistent with the guidance contained in ''Standards for Internal Control in the Federal Government'' issued by the Comptroller General of the United States (Green Book) and the ''Internal Control Integrated Framework'' (revised in 2013), issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

Highlights of the changes in the Appendices include the following:

- Appendix II provides the dates of agencies' issuance of final rules or regulatory actions to implement the OMB Guidance in 2 CFR 200.
- Appendix III lists the National Single Audit Coordinators and Single Audit Key Management Liaisons, along with their distinct roles for answering public inquiries regarding Single Audit.
- A list of changes to the 2016 Supplement can be found at Appendix V.

Due to its length, the 2016 Supplement is not included in this Notice.

DATES: The 2016 Supplement supersedes the 2015 Supplement and will apply to audits of fiscal years beginning after June 30, 2015. All comments on the 2016 Supplement must be in writing and received by October 31, 2016. Late comments will be considered to the extent practicable. We received no comments on the 2015 Supplement.

Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Electronic mail comments may be submitted to: *Hai_M._Tran@omb.eop.gov*. Please include ''2 CFR 200 Subpart F—Audit Requirement, Compliance Supplement—2016'' in the subject line and the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and email address in the text of the message. Comments may also be submitted via facsimile at 202–395–3952.

Comments may be mailed to Gilbert Tran, Office of Federal Financial Management, Office of Management and Budget, 725 17th Street NW., Room 6025, New Executive Office Building, Washington, DC 20503.

Comments may also be sent through *http://www.regulations.gov*—a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type ''2 CFR 200 Subpart F—Audit Requirement, Compliance Supplement—2016'' (in quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments. Comments received through the Web site by the date specified above will be included as part of the official record.

ADDRESSES: The 2016 Supplement is available online on the OMB home page at *https://www.whitehouse.gov/omb/financial_default*.

FOR FURTHER INFORMATION CONTACT: Recipients and auditors should contact their cognizant or oversight agency for audit, or Federal awarding agency, as appropriate under the circumstances. The Federal agency contacts are listed in Appendix III of the Supplement. Subrecipients should contact their pass-through entity. Federal agencies should contact Gilbert Tran, Office of Management and Budget, Office of Federal Financial Management, at (202) 395–3052.

Mark Reger,

Deputy Controller.

[FR Doc. 2016–18780 Filed 8–8–16; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (16–055)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Ms. Frances Teel, JF000, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Frances Teel, NASA PRA Clearance Officer, NASA Headquarters, 300 E Street SW., JF000, Washington, DC 20546, *Frances.C.Teel@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection provides a means by which NASA contractors can voluntarily and confidentially report any safety concerns or hazards pertaining to NASA programs, projects, or operations.

II. Method of Collection

The current, paper-based reporting system ensures the protection of a submitters anonymity and secure

submission of the report by way of the U.S. Postal Service.

III. Data

Title: NASA Safety Reporting System.
OMB Number: 2700–0063.
Type of Review: Extension of a currently approved collection.
Affected Public: Business or other for-profit.
Number of Respondents: 75.
Responses per Respondent: 1.
Annual Responses: 75.
Hours per Request: 15 min.
Annual Burden Hours: 19.
Frequency of Report: As needed.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Frances Teel,

NASA PRA Clearance Officer.

[FR Doc. 2016–18860 Filed 8–8–16; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–390; NRC–2015–0162]

Tennessee Valley Authority; Watts Bar Nuclear Plant, Unit 1; Maximum Number of Tritium Producing Burnable Absorber Rods

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an amendment to Facility Operating License No. NPF–90, issued to the Tennessee Valley Authority, for operation of the Watts Bar Nuclear Plant, Unit 1. The amendment allows Watts Bar Nuclear Plant, Unit 1, to irradiate up to 1792 tritium producing burnable absorber rods (TPBARs) per cycle. This amendment revised Technical Specification (TS) 4.2.1, "Fuel Assemblies," to increase the maximum number of TPBARs allowed in the core from 704 to 1792. The amendment also revised Surveillance Requirement (SR) 3.5.1.4 of TS 3.5.1, "Accumulators," and SR 3.5.4.3 of TS 3.5.4, "Refueling Water Storage Tank (RWST)," to delete outdated information related to the tritium production program.

DATES: August 9, 2016.

ADDRESSES: Please refer to Docket ID NRC–2015–0162 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0162. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Jeanne Dion, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1349, email: *Jeanne.Dion@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC has issued Amendment No. 107 to Facility Operating License No. NPF–90 issued to the Tennessee Valley Authority, which revised the TSs for operation of the Watts Bar Nuclear Plant, Unit 1, located in Rhea County, TN. A publicly-available version is in ADAMS under Accession No. ML16159A057. Documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment. The amendment was effective as of the date of its issuance.

The amendment revised TS 4.2.1, "Fuel Assemblies," to increase the maximum number of TPBARs allowed in the core from 704 to 1792. The amendment also revised SR 3.5.1.4 of TS 3.5.1, "Accumulators," and SR 3.5.4.3 of TS 3.5.4, "Refueling Water Storage Tank (RWST)," to delete outdated information related to the tritium production program.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in chapter I of title 10 of the *Code of Federal Regulations,* which are set forth in the license amendment.

A Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on July 7, 2015 (80 FR 38752). A correction to the notice was published on April 22, 2016 (81 FR 23761), to correct a typographical error in the original notice. No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment, published on July 5, 2016 (81 FR 43656), related to the action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility dated December 1978 and supplemented in April 1995.

For further details with respect to this action, see the application for amendment dated March 31, 2015, as supplemented by letters dated April 28, 2015, May 27, 2015, June 15, 2015, September 14, 2015, September 25, 2015, November 30, 2015, December 22, 2015, December 29, 2015, February 22, 2016, and March 31, 2016 (ADAMS Accession Nos. ML15098A446, ML15124A334, ML15147A611, ML15167A359, ML15258A204, ML15268A568, ML15335A468, ML16054A661, ML16004A161, ML16053A513, and ML16095A064, respectively).

Dated at Rockville, Maryland, this 29th day of July 2016.

For the Nuclear Regulatory Commission.

Robert G. Schaaf,

Senior Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–18841 Filed 8–8–16; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2016–250]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 11, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2016–250; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* August 3, 2016; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* August 11, 2016.

This Notice will be published in the **Federal Register**.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2016–18843 Filed 8–8–16; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78474; File No. 4–701]

Self-Regulatory Organizations; Investors Exchange LLC; Order Declaring Effective a Minor Rule Violation Plan

August 3, 2016.

On July 11, 2016, Investors Exchange LLC ("IEX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed minor rule violation plan ("MRVP" or "Plan") pursuant to Section 19(d)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19d–1(c)(2) thereunder.[2] The proposed MRVP was published for public comment on July 18, 2016.[3] The Commission received no comments on the proposal. This order declares the Exchange's proposed MRVP effective.

The Exchange's MRVP specifies the rule violations which will be included in the Plan and will have sanctions not exceeding $2,500. Any violations which are resolved under the MRVP would not be subject to the provisions of Rule 19d–1(c)(1) of the Act,[4] which requires that a self-regulatory organization ("SRO") promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.[5] In accordance with Rule 19d–1(c)(2) under the Act,[6] the Exchange proposed to designate certain specified rule violations as minor rule violations, and requested that it be relieved of the prompt reporting requirements regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis.

The Exchange proposed to include in its MRVP the procedures included in Exchange Rule 9.216(b) ("Procedure for Violation Under Plan Pursuant to Exchange Act Rule 19d–1(c)(2)") and the violations to be included in Exchange Rule 9.218 ("Violations Appropriate for Disposition Under Plan Pursuant to Exchange Act Rule 19d–1(c)(2)").[7] According to the Exchange's

[1] 15 U.S.C. 78s(d)(1).

[2] 17 CFR 240.19d–1(c)(2).

[3] *See* Securities Exchange Act Release No. 78300 (July 12, 2016), 81 FR 46730 ("Notice").

[4] 17 CFR 240.19d–1(c)(1).

[5] The Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow SROs to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan filed with and declared effective by the Commission is not considered "final" for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

[6] 17 CFR 240.19d–1(c)(2).

[7] The Exchange received its grant of registration on June 17, 2016, which included approving the rules that govern the Exchange. *See* Securities Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41141 (June 23, 2016) (File No. 10–222).

Under the proposed MRVP, violations of the following rules would be appropriate for disposition under the MRVP: Rule 2.160(p)—Continuing Education Requirements; Rule 4.511 (General Requirements related to books and records requirements); Rule 4.540 (Furnishing of records); Rule 5.110 (Supervision); Rule 8.220 (Automated submission of trading data requested); Rule

Continued

proposed MRVP, under Rule 9.216(b), the Exchange may impose a fine (not to exceed $2,500) and/or a censure on any Member or associated person with respect to any rule listed in IEX Rule 9.218. If the Financial Industry Regulatory Authority Department of Enforcement or the Department of Market Regulation, on behalf of the Exchange, has reason to believe a violation has occurred and if the Member or associated person does not dispute the violation, the Department of Enforcement or the Department of Market Regulation may prepare and request that the Member or associated person execute a minor rule violation plan letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive the Member's or associated person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the IEX Appeals Committee, the Board, the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter must describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed. Unless the letter states otherwise, the effective date of any sanction imposed will be a date to be determined by IEX Regulation staff. In the event the letter is not accepted by the Member or associated person, or is rejected by the Office of Disciplinary Affairs, the matter can proceed in accordance with the Exchange's disciplinary rules, which include hearing rights for formal disciplinary proceedings.[8]

Once IEX's MRVP is effective, the Exchange will provide to the Commission a quarterly report for any actions taken on minor rule violations under the MRVP. The quarterly report will include: The Exchange's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the sanction imposed, the number of times the rule violation occurred, and the date of the disposition.[9]

The Commission finds that the proposal is consistent with the public interest, the protection of investors, and otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[10] because the MRVP will permit the Exchange to carry out its oversight and enforcement responsibilities as an SRO more efficiently in cases where full disciplinary proceedings are not necessary due to the minor nature of the particular violation.

In declaring the Exchange's MRVP effective, the Commission in no way minimizes the importance of compliance with Exchange rules and all other rules subject to the imposition of sanctions under Exchange Rule 9.216(b). The Commission believes that the violation of an SRO's rules, as well as Commission rules, is a serious matter. However, Exchange Rule 9.216(b) provides a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that the Exchange will continue to conduct surveillance and make determinations based on its findings, on a case-by-case basis, regarding whether a sanction under the MRVP is appropriate, or whether a violation requires formal disciplinary action.

IT IS THEREFORE ORDERED, pursuant to Rule 19d–1(c)(2) under the Act,[11] that the proposed MRVP for Investors Exchange LLC, File No. 4–701, be, and hereby is, declared effective.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–18794 Filed 8–8–16; 8:45 am]

BILLING CODE 8011–01–P

11.151(a)(1) (Market Maker two-sided quotation requirement); Rule 11.290 (Short sales); Rule 11.310 (Locking or crossing quotations in NMS stocks); and Rule 11.420 (Order audit trail system requirements). *See* Notice, *supra* note 3. When IEX's MRVP is declared effective, IEX will file a proposed rule change to amend Rule 9.218 to specify the violations to be included in the MRVP.

[8] *See,* Notice, *supra* note 3.

[9] The Exchange attached a sample form of the quarterly report with its submission to the Commission.

[10] 17 CFR 240.19d–1(c)(2).

[11] *Id.*

[12] 17 CFR 200.30–3(a)(44).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78472; File No. SR–BatsEDGX–2016–35]

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.21, Retail Orders, To Conform to the Rules of Bats BZX Exchange, Inc. and Bats BYX Exchange, Inc.

August 3, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 22, 2016, Bats EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule11.21, Retail Orders, to conform to the rules of Bats BZX Exchange, Inc. ("BZX") and Bats BYX Exchange, Inc. ("BYX").[5]

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* BYX Rule 11.24 and BZX Rule 11.25. *See* Securities Exchange Act Release Nos. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (SR–BYX–2012–019); 72730 (July 31, 2014), 79 FR 45857 (August 6, 2014) (SR–BYX–2014–013); 73236 (September 26, 2014) 79 FR 59541 (October 2, 2014) (SR–BYX–2014–024); 76207 (October 21, 2015), 80 FR 65824 (October 27, 2015) (SR–BYX–2015–45); 73237 (September 26, 2014), 79 FR 59537 (October 2, 2014) (SR–BATS–2014–043); 73677 (November 24, 2014), 79 FR 71150 (December 1, 2014) (SR–BATS–2014–058); *and* 76205 (October 21, 2015), 80 FR 65828 (October 27, 2015) (SR–BATS–2015–90). The Exchange does not proposes to adopt paragraphs (e), (f), (g) and (h) of BYX Rule 11.24 concerning the BYX Retail Price Improvement Program. These paragraph are also not included in BZX Rule 11.25.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In early 2014, the Exchange and its affiliate, Bats EDGA Exchange, Inc. ("EDGA"), received approval to effect a merger (the "Merger") of the Exchange's parent company, Direct Edge Holdings LLC, with Bats Global Markets, Inc., the parent of BZX and BYX (together with BZX, EDGA, and EDGX, the "BGM Affiliated Exchanges").[6] In the context of the Merger, the BGM Affiliated Exchanges are working to align certain system and regulatory functionality, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the proposal set forth below is intended to amend Exchange Rule 11.21, Retail Orders, to conform to the rules of BZX and BYX in order to provide a consistent rule set across each of the BGM Affiliated Exchanges.[7]

First, the Exchange proposes to amend paragraph (a) of Rule 11.21 to include definitions of "Retail Member Organization" and "Retail Order". Subparagraph (a)(1) would define a Retail Member Organization or RMO as "a Member[8] (or a division thereof) that has been approved by the Exchange under this Rule to submit Retail Orders." This definition is identical to the definition of Retail Member Organization under BYX Rule 11.24(a)(1) and BZX Rule 11.25(a)(1). The Exchange also proposes to slightly revise and relocate the definition of Retail Order under current Rule 11.21(a). Exchange Rule 11.21(a) currently defines a Retail Order as an agency order or riskless principal order that meets the criteria of the Financial Industry Regulatory Authority, Inc. ("FINRA") Rule 5320.03 that originates from a natural person; (ii) is submitted to EDGX by a Member, provided that no change is made to the terms of the order; and (iii) does not originate from a trading algorithm or any other computerized methodology. The Exchange proposes to renumber the definition of Retail Order as subparagraph (a)(2) and revise it to specify that the Retail Order is to be submitted by a Retail Member Organization. The amended definition of Retail Order under Exchange Rule 11.21(a)(2) would be identical to BYX Rule 11.24(a)(2) and BZX Rule 11.25(a)(2).

Second the Exchange proposes to consolidate paragraphs (b) and (c) to Exchange Rule 11.21 into a single paragraph (b) entitled, Retail Member Organization Qualifications and Application. Proposed Exchange Rule 11.21(b) would be identical to BYX Rule 11.24(b) and BZX Rule 11.25(b). Rule 11.21(b)(1) would state that to qualify as a Retail Member Organization, a Member must conduct a retail business or route retail orders on behalf of another broker-dealer. For purposes of Exchange Rule 11.21, conducting a retail business shall include carrying retail customer accounts on a fully disclosed basis.[9]

Current Rule 11.21(b) requires Members to submit a signed written attestation, in a form prescribed by the Exchange, that they have implemented policies and procedures that are reasonably designed to ensure that substantially all orders designated by the Member as a Retail Order comply with the above requirements. The Exchange proposes to incorporate this requirement into proposed Rule 11.21(b)(2). Proposed subparagraph (b)(2) of Rule 11.21 would state that, to become a Retail Member Organization, a Member must submit: (A) An application form; (B) supporting documentation, which may include sample marketing literature, Web site screenshots, other publicly disclosed materials describing the Member's retail order flow, and any other documentation and information requested by the Exchange in order to confirm that the applicant's order flow would meet the requirements of the Retail Order definition; and (C) an attestation, in a form prescribed by the Exchange, that substantially all orders submitted as Retail Orders will qualify as such under this Rule. Proposed Rule 11.21(b)(2) is identical to BYX Rule 11.24(b)(2) and BZX Rule 11.25(b)(2).

The Exchange also proposes to adopt subparagraphs (b)(3), (4), (5), and (6) to Rule 11.21, the content of which is identical to BYX Rule 11.24(b)(3), (4), (5), and (6) and BZX Rule 11.25(b)(3), (4), (5), and (6). Subparagraph (b)(3) would state that after an applicant submits the application form, supporting documentation, and attestation, the Exchange shall notify the applicant of its decision in writing. Subparagraph (b)(4) would allow a disapproved applicant to: (A) Request an appeal of such disapproval by the Exchange as provided in proposed paragraph (d) discussed below; and/or (B) reapply for Retail Member Organization status 90 days after the disapproval notice is issued by the Exchange. Subparagraph (b)(5) permits a Retail Member Organization to voluntarily withdraw from such status at any time by giving written notice to the Exchange.

Current Rule 11.21(c) states that if the Member represents Retail Orders from another broker-dealer customer, the Member's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker-dealer customer that it designates as Retail Orders meet the definition of a Retail Order. The Member must: (i) Obtain an annual written representation from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements specified by the Exchange; and (ii) monitor whether its broker-dealer customer's Retail Order flow continues to meet the applicable requirements. The Exchange proposes to incorporate this requirement into proposed Rule 11.21(b)(6). Proposed subparagraph (b)(6) of Rule 11.21 would state that a Retail Member Organization must have written policies and procedures reasonably designed to assure that it will only designate orders as Retail Orders if all requirements of a Retail Order are met. Such written policies and procedures must require the Member to: (i) Exercise due diligence before entering a Retail Order to assure that entry as a Retail Order is in compliance with the requirements of this Rule; and (ii) monitor whether orders entered as Retail Orders meet the applicable requirements. Subparagraph (b)(6) would also require that if a Retail Member Organization does not itself

[6] *See* Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR–EDGX–2013–043; SR–EDGA–2013–034).

[7] The Exchange notes that EDGA does not currently include a Retail Order rule.

[8] *See* Exchange Rule 1.5(n).

[9] Exchange Rule 11.21 does not currently state that conducting a retail business shall include carrying retail customer accounts on a fully disclosed basis. The Exchange notes that this provision is currently included in BYX Rule 11.24(b)(1) and BZX Rule 11.25(b)(1) and the Exchange proposes to add it to Rule 11.21(b)(1) to ensure this provision of the Exchange, BZX, and BZX rules are fully harmonized.

conduct a retail business but routes Retail Orders on behalf of another broker-dealer, the Retail Member Organization's supervisory procedures must be reasonably designed to assure that the orders it receives from such other broker-dealer that are designated as Retail Orders meet the definition of a Retail Order. The Retail Member Organization must: (i) Obtain an annual written representation, in a form acceptable to the Exchange, from each other broker-dealer that sends the Retail Member Organization orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements of this Rule; and (ii) monitor whether Retail Order flow routed on behalf of such other broker-dealers meets the applicable requirements. Proposed subparagraph (b)(6) of Rule 11.21 is identical to BYX Rule 11.24(b)(6) and BZX Rule 11.25(b)(6).

Proposed paragraph (c) to Rule 11.21 would set forth the process for disqualifying a Member as a Retail Member Organization and is identical to BYX Rule 11.24(c) and BZX Rule 11.25(c). Subparagraph (c)(1) would state that if a Retail Member Organization designates orders submitted to the Exchange as Retail Orders and the Exchange determines, in its sole discretion, that such orders fail to meet any of the requirements set forth in paragraph (a) of Rule 11.21 above, the Exchange may disqualify a Member from its status as a Retail Member Organization. Subparagraph (c)(2) would state that the Exchange shall determine if and when a Member is disqualified from its status as a Retail Member Organization. When disqualification determinations are made, the Exchange shall provide a written disqualification notice to the Member. Subparagraph (c)(3) would state that a Retail Member Organization that is disqualified may: (A) Appeal such disqualification as provided in paragraph (d) discussed below; and/or (B) reapply for Retail Member Organization status 90 days after the date of the disqualification notice from the Exchange.

Paragraph (d) of Rule 11.21 would mirror BYX Rule 11.24(d) and BZX Rule 11.25(d) by setting forth the processes for Retail Member Organization to appeal a disqualification determination. Subparagraph (d)(1) would state that if a Member disputes the Exchange's decision to disapprove it under paragraph (b) of Rule 11.21 or disqualify it under paragraph (c) of Rule 11.21, the Member ("appellant") may request, within five business days after notice of the decision is issued by the Exchange, that the Retail Attribution Panel (the "Panel") review the decision to determine if it was correct. Pursuant to subparagraph (d)(2), the Panel will consist of the Exchange's Chief Regulatory Officer ("CRO"), or a designee of the CRO, and two officers of the Exchange designated by the Chief Information Officer ("CIO"). Subparagraph (d)(3) states that the Panel shall review the facts and render a decision within the time frame prescribed by the Exchange. Subparagraph (d)(4) would allow the Panel to overturn or modify an action taken by the Exchange under Rule 11.21 and state that a determination by the Panel shall constitute final action by the Exchange.

Lastly, the Exchange proposes to renumber current paragraph (d) to Rule 11.21 as paragraph (e) and current paragraph (e) to Rule 11.21 as paragraph (f) and to replace references to Member with the term Retail Member Organization in both of these paragraphs. Under Rule 11.21(e), Retail Member Organizations will only be able to designate their orders as Retail Orders on either an order-by-order basis using FIX ports or by designating certain of their FIX ports at the Exchange as "Retail Order Ports." Unless otherwise instructed by the Retail Member Organization, a Retail Order will be identified as Retail when routed to an away Trading Center. Under Rule 11.21(f), Retail Member Organizations will continue to be permitted to designate a Retail Order to be identified as Retail on the EDGX Book Feed on an order-by-order basis or to identify all its Retail Orders as Retail on a port-by-port basis where that port is also designated as a Retail Order Port. A Retail Member Organization that instructs the Exchange to identify all its Retail Orders as Retail on a Retail Order Port will continue to be able to override such setting and designate any individual Retail Order from that port as Attributable or as Non-Attributable, as set forth in Rule 11.6(a).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[10] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[11] because it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. As mentioned above, the proposed rule change would allow the Exchange, BYX, and BZX to provide a consistent set of rules as it relates to Retail Orders and Retail Member Organizations. Consistent rules, in turn, will simplify the regulatory requirements for Members of the Exchange that are also participants on BYX and BZX. The proposed rule change would provide greater harmonization between rules of similar purpose on the Exchange, BYX, and BZX, resulting in greater uniformity and less burdensome and more efficient regulatory compliance and understanding of Exchange Rules. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system. Similarly, the Exchange believes harmonizing these rules across the Exchange, BYX, and BZX promotes just and equitable principles of trade by providing consistent rules regarding Retail Member Organizations and Retail Orders.

Lastly, the Exchange also believes the proposed qualification standards and review process under Rule 11.21 promote just and equitable principles and are not unfairly discriminatory because they are designed to ensure that Members are properly qualified as a Retail Member Organization and only attribute as Retail those orders that meet the definition of Retail Orders. The qualification process proposed herein by the Exchange is not designed to permit unfair discrimination, but rather ensure that order that are designated to be attributed are Retail are, in fact, order submitted by a retail customer that satisfy the proposed definition of Retail Order. Lastly, the Exchange notes that these qualification and review provisions are substantially similar to those included in the rules of the BYX, BZX, New York Stock Exchange, Inc.'s ("NYSE"), and NYSE MKT LLC ("NYSE MKT") that have been previously approved by the Commission.[12]

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *See* BYX Rule 11.24, BZX Rule 11.25, NYSE Rule 107C, NYSE MKT LLC NYSE MKT Rule 107C, *and* NYSE Arca, Inc. ("NYSE Arca") Rule 7.44. The Exchange notes that the NYSE, NYSE Arca, and NYSE MKT programs do not allow members to elect that their retail orders be identified as Retail on the exchange's proprietary data feeds.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the act. To the contrary, allowing the Exchange to implement substantively identical rules across the Exchange, BYX, and BZX regarding Retail Orders and Retail Member Organizations does not present any competitive issues, but rather is designed to provide greater harmonization among the Exchange, BYX, and BZX rules of similar purpose.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (A) Significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate it has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and paragraph (f)(6) of Rule 19b–4 thereunder,[14] the Exchange has designated this rule filing as non-controversial. The Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BatsEDGX–2016–35 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsEDGX–2016–35. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsEDGX–2016–35, and should be submitted on or before August 30, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–18792 Filed 8–8–16; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, August 11, 2016 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Stein, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Adjudicatory matters; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: August 4, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–18932 Filed 8–5–16; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78473; File No. 4–566]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing and Order Approving and Declaring Effective an Amendment to the Plan for the Allocation of Regulatory Responsibilities Among Bats BZX Exchange, Inc., Bats BYX Exchange, Inc., Chicago Stock Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ BX, Inc., NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, NYSE Arca, Inc., and Investors Exchange LLC Relating to the Surveillance, Investigation, and Enforcement of Insider Trading Rules

August 3, 2016.

Notice is hereby given that the Securities and Exchange Commission ("Commission") has issued an Order, pursuant to Section 17(d) of the Securities Exchange Act of 1934 ("Act"),[1] approving and declaring effective an amendment to the plan for allocating regulatory responsibility ("Plan") filed on July 21, 2016, pursuant to Rule 17d–2 of the Act,[2] by Bats BZX Exchange, Inc. ("BZX"), Bats BYX Exchange, Inc. ("BYX"), Chicago Stock Exchange, Inc. ("CHX"), Bats EDGA Exchange, Inc. ("EDGA"), Bats EDGX Exchange, Inc. ("EDGX"), Financial Industry Regulatory Authority, Inc. ("FINRA"), NASDAQ BX, Inc. ("NASDAQ BX"), NASDAQ PHLX LLC ("NASDAQ PHLX"), The NASDAQ Stock Market LLC ("NASDAQ"), National Stock Exchange, Inc. ("NSX"), New York Stock Exchange LLC ("NYSE"), NYSE MKT LLC ("NYSE MKT"), NYSE Arca, Inc. ("NYSE Arca"), and Investors Exchange LLC ("IEX") (collectively, "Participating Organizations" or "parties").

I. Introduction

Section 19(g)(1) of the Act,[3] among other things, requires every self-regulatory organization ("SRO") registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d)[4] or Section 19(g)(2)[5] of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act[6] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[7] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[8] Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.[9] When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.[10] Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system, and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

On September 12, 2008, the Commission declared effective the Participating Organizations' Plan for allocating regulatory responsibilities pursuant to Rule 17d–2.[11] The Plan is designed to eliminate regulatory duplication by allocating regulatory responsibility over Common FINRA Members[12] (collectively "Common Members") for the surveillance, investigation, and enforcement of common insider trading rules ("Common Rules").[13] The Plan assigns regulatory responsibility over Common FINRA Members to FINRA for surveillance, investigation, and enforcement of insider trading by broker-dealers, and their associated persons, with respect to Listed Stocks (as defined in the Plan), irrespective of the marketplace(s) maintained by the Participating Organizations on which the relevant trading may occur.

III. Proposed Amendment to the Plan

On July 21, 2016, the Parties submitted a proposed amendment to the Plan. The proposed amendment was submitted to reflect the addition of IEX as a Listing Market (as defined in the

[1] 15 U.S.C. 78q(d).

[2] 17 CFR 240.17d–2.

[3] 15 U.S.C. 78s(g)(1).

[4] 15 U.S.C. 78q(d).

[5] 15 U.S.C. 78s(g)(2).

[6] 15 U.S.C. 78q(d)(1).

[7] *See* Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

[8] 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

[9] *See* Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

[10] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

[11] *See* Securities Exchange Act Release No. 58536 (September 12, 2008), 73 FR 54646 (September 22, 2008). *See also* Securities Exchange Act Release Nos. 58806 (October 17, 2008), 73 FR 63216 (October 23, 2008); 61919 (April 15, 2010), 75 FR 21051 (April 22, 2010); 63103 (October 14, 2010), 75 FR 64755 (October 20, 2010); 63750 (January 21, 2011), 76 FR 4948 (January 27, 2011); and 65991 (December 16, 2011), 76 FR 79714 (December 22, 2011).

[12] Common FINRA Members include members of FINRA and at least one of the Participating Organizations.

[13] Common rules are defined as: (i) Federal securities laws and rules promulgated by the Commission pertaining to insider trading, and (ii) the rules of the Participating Organizations that are related to insider trading. *See* Exhibit A to the Plan.

Plan). Other similar conforming amendments were made to reflect this addition. The Participating Organizations also amended the Plan, among other things, to: (i) Reflect name changes of certain Participating Organizations; (ii) remove Chicago Board Options Exchange, Inc. as a Participating Organization; (iii) replace the defined term "Listed Stock(s)" with "NMS Stock(s)" and revise the definition of the term; and (iv) update the SRO rules that are covered by the Agreement. In addition, the Participating Organizations entered into a regulatory services agreement that addresses investigation and enforcement in situations involving Insider Trading by non-Common FINRA Members. The text of the proposed amended 17d–2 plan is as follows (additions are *italicized;* deletions are [bracketed]):

* * * * *

Agreement for the Allocation of Regulatory Responsibility of Surveillance, Investigation and Enforcement for Insider Trading pursuant to § 17(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78q(d), and Rule 17d–2 Thereunder

This agreement (the "Agreement") by and among [BATS]*Bats BZX* Exchange, Inc. ("[BATS]*BZX*"), [BATS Y-]*Bats BYX* Exchange, Inc. ("BYX"), [Chicago Board Options Exchange, Inc. ("CBOE") [1],] Chicago Stock Exchange, Inc. ("CHX"), *Bats* EDGA Exchange, Inc. ("EDGA"), *Bats* EDGX Exchange, Inc. ("EDGX"), Financial Industry Regulatory Authority, Inc. ("FINRA"), NASDAQ [OMX] BX, Inc. ("NASDAQ [OMX] BX"), NASDAQ [OMX] PHLX LLC ("NASDAQ [OMX] PHLX"), The NASDAQ Stock Market LLC ("NASDAQ"), National Stock Exchange, Inc. ("NSX"), New York Stock Exchange LLC ("NYSE"), NYSE [Amex]*MKT* LLC ("NYSE [Amex]*MKT*"), [and] NYSE Arca, Inc. ("NYSE Arca") *and Investors' Exchange LLC ("IEX")* (each a "Participating Organization" and together, the "Participating Organizations"), is made pursuant to § 17(d) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78q(d), and Securities and Exchange Commission ("SEC") Rule 17d–2, which allow for plans to allocate regulatory responsibility among self-regulatory organizations ("SROs"). Upon approval by the SEC, this Agreement shall amend and restate the agreement among the Participating Organizations approved by the SEC on [January 21, 2011]*December 16, 2011.*

Whereas, the Participating Organizations desire to: (a) foster cooperation and coordination among the SROs; (b) remove impediments to, and foster the development of, a national market system; (c) strive to protect the interest of investors; and (d) eliminate duplication in their regulatory surveillance, investigation and enforcement of insider trading;

Whereas, the Participating Organizations are interested in allocating to FINRA regulatory responsibility for Common FINRA Members (as defined below) for surveillance, investigation and enforcement of Insider Trading (as defined below) in [Listed] *NMS* Stocks (as defined below) irrespective of the marketplace(s) maintained by the Participating Organizations on which the relevant trading may occur in violation of Common Insider Trading Rules (as defined below);

Whereas, the Participating Organizations will request regulatory allocation of these regulatory responsibilities by executing and filing with the SEC a plan for the above stated purposes (this Agreement, also known herein as the "Plan") pursuant to the provisions of § 17(d) of the Act, and SEC Rule 17d–2 thereunder, as described below; and

Whereas, the Participating Organizations will also enter into a Regulatory Services Agreement (the "Insider Trading RSA"), of even date herewith, to provide for the investigation and enforcement of suspected Insider Trading against broker-dealers, and their associated persons, that are not Common FINRA Members in the case of Insider Trading in [Listed] *NMS* Stocks..

Now, Therefore, in consideration of the mutual covenants contained hereafter, and other valuable consideration to be mutually exchanged, the Participating Organizations hereby agree as follows:

1. *Definitions.* Unless otherwise defined in this Agreement, or the context otherwise requires, the terms used in this Agreement will have the same meaning they have under the Act, and the rules and regulations thereunder. As used in this Agreement, the following terms will have the following meanings:

a. "Rule" of an "exchange" or an "association" shall have the meaning defined in Section 3(a)(27) of the Act.

b. "Common FINRA Members" shall mean members of FINRA and at least one of the Participating Organizations.

c. "Common Insider Trading Rules" shall mean (i) the federal securities laws and rules thereunder promulgated by the SEC pertaining to insider trading, and (ii) the rules of the Participating Organizations that are related to insider trading, as provided on Exhibit A to this Agreement.

d. "Effective Date" shall have the meaning set forth in paragraph [28]*27.*

e. "Insider Trading" shall mean any conduct or action taken by a natural person or entity related in any way to the trading of securities by an insider or a related party based on or on the basis of material non-public information obtained during the performance of the insider's duties at the corporation, or otherwise misappropriated, that could be deemed a violation of the Common Insider Trading Rules.

f. "Intellectual Property" will mean any: (1) Processes, methodologies, procedures, or technology, whether or not patentable; (2) trademarks, copyrights, literary works or other works of authorship, service marks and trade secrets; or (3) software, systems, machine-readable texts and files and related documentation.

g. "Plan" shall mean this Agreement, which is submitted as a Plan for the allocation of regulatory responsibilities of surveillance for insider trading pursuant to § 17(d) of the Act, 15 U.S.C. 78q(d), and SEC Rule 17d–2.

h. "[Listed]*NMS* Stock(s)" shall [mean NYSE Listed Stock(s), NASDAQ Listed Stock(s), NYSE Amex Listed Stock(s), NYSE Arca Listed Stock(s), BATS Listed Stock(s) or CHX Solely Listed Stock(s)]*have the meaning set forth in Rule 600(b)(47) of SEC Regulation NMS.*

[i. "NYSE Listed Stock" shall mean an equity security that is listed on the NYSE.]

[j. "NASDAQ Listed Stock" shall mean an equity security that is listed on NASDAQ.]

[k. "NYSE Amex Listed Stock" shall mean an equity security that is listed on NYSE Amex.]

[l. "NYSE Arca Listed Stock" shall mean an equity security that is listed on NYSE Arca.]

[m. "BATS Listed Stock" shall mean an equity security that is listed on BATS.]

[n. "CHX Solely Listed Stock" shall mean an equity security that is listed only on the CHX.]

[o.]*i.* "Listing Market" shall mean [NYSE Amex, NASDAQ, NYSE, NYSE Arca or BATS, but not CHX] *an exchange that lists NMS stocks.*

2. *Assumption of Regulatory Responsibilities.* On the Effective Date of the Plan, FINRA will assume regulatory responsibilities for surveillance,

[1] [CBOE's allocation of certain regulatory responsibilities to FINRA under this Agreement is limited to the activities of the CBOE Stock Exchange, LLC, a facility of CBOE.]

investigation and enforcement of Insider Trading by broker-dealers, and their associated persons, for Common FINRA Members with respect to [Listed]*NMS* Stocks, irrespective of the marketplace(s) maintained by the Participant Organizations on which the relevant trading may occur in violation of the Common Insider Trading Rules ("Regulatory Responsibilities").

3. *Certification of Insider Trading Rules.*

a. *Initial Certification.* By signing this Agreement, the Participating Organizations, other than FINRA, hereby certify to FINRA that their respective lists of Common Insider Trading Rules contained in Exhibit A hereto are correct, and FINRA hereby confirms that such rules are Common Insider Trading Rules as defined in this Agreement.

b. *Yearly Certification.* Each year following the commencement of operation of this Agreement, or more frequently if required by changes in the rules of the Participating Organizations, each Participating Organization shall submit a certified and updated list of Common Insider Trading Rules to FINRA for review, which shall (i) add Participating Organization rules not included in the then-current list of Common Insider Trading Rules that qualify as Common Insider Trading Rules as defined in this Agreement; (ii) delete Participating Organization rules included in the current list of Common Insider Trading Rules that no longer qualify as Common Insider Trading Rules as defined in this Agreement; and (iii) confirm that the remaining rules on the current list of Common Insider Trading Rules continue to be Participating Organization rules that qualify as Common Insider Trading Rules as defined in this Agreement. FINRA shall review each Participating Organization's annual certification and confirm whether FINRA agrees with the submitted certified and updated list of Common Insider Trading Rules by each of the Participating Organizations.

4. *No Retention of Regulatory Responsibility.* The Participating Organizations do not contemplate the retention of any responsibilities with respect to the regulatory activities being assumed by FINRA under the terms of this Agreement.

[5. *Dually Listed Stocks.* Stocks that are listed on more than one Participating Organization shall be designated as an NYSE Listed Stock, a NASDAQ Listed Stock, an NYSE Arca Listed Stock or an NYSE Amex Listed Stock based on the applicable transaction reporting plan for the equity security as set forth in paragraph 1.b. of Exhibit B.]

[6]*5. Fees.* FINRA shall charge Participating Organizations for performing the Regulatory Responsibilities, as set forth in the Schedule of Fees, attached as Exhibit B.

[7]*6. Applicability of Certain Laws, Rules, Regulations or Orders.* Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the SEC. To the extent such statute, rule, or order is inconsistent with one or more provisions of this Agreement, the statute, rule, or order shall supersede the provision(s) hereof to the extent necessary to be properly effectuated and the provision(s) hereof in that respect shall be null and void.

[8]*7. Exchange Committee; Reports.*

a. *Exchange Committee.* The Participating Organizations shall form a committee (the "Exchange Committee"), which shall act on behalf of all of Participating Organizations in receiving copies of the reports described below and in reviewing issues that arise under this Agreement. Each Participating Organization shall appoint a representative to the Exchange Committee. The Exchange Committee representatives shall report to their respective executive management bodies regarding status or issues under this Agreement. The Participating Organizations agree that the Exchange Committee will meet regularly up to four (4) times a year, with no more than one meeting per calendar quarter. At these meetings, the Exchange Committee will discuss the conduct of the Regulatory Responsibilities and identify issues or concerns with respect to this Agreement, including matters related to the calculation of the cost formula and accuracy of fees charged and provision of information related to the same. The SEC shall be permitted to attend the meetings as an observer.

b. *Reports.* FINRA shall provide the reports set forth in Exhibit C hereto and any additional reports related to this Agreement reasonably requested by a majority vote of all representatives to the Exchange Committee at each Exchange Committee meeting, or more often as the Participating Organizations deem appropriate, but no more often than once every quarterly billing period.

[9]*8. Customer Complaints.* If a Participating Organization receives a copy of a customer complaint relating to Insider Trading or other activity or conduct that is within FINRA's Regulatory Responsibilities as set forth in this Agreement, the Participating Organization shall promptly forward to FINRA, as applicable, a copy of such customer complaint.

[10]*9. Parties to Make Personnel Available as Witnesses.* Each Participating Organization shall make its personnel available to FINRA to serve as testimonial or non-testimonial witnesses as necessary to assist FINRA in fulfilling the Regulatory Responsibilities allocated under this Agreement. FINRA shall provide reasonable advance notice when practicable and shall work with a Participating Organization to accommodate reasonable scheduling conflicts within the context and demands as the entity with ultimate regulatory responsibility. The Participating Organization shall pay all reasonable travel and other expenses incurred by its employees to the extent that FINRA requires such employees to serve as witnesses, and provide information or other assistance pursuant to this Agreement.

[11]*10. Market Data; Sharing of Work-Papers, Data and Related Information.*

a. *Market Data.* FINRA shall obtain raw market data necessary to the performance of regulation under this Agreement from (a) the Consolidated Tape Association ("CTA") [as the exclusive securities information processor ("SIP") for all NYSE Listed Stocks, NYSE Amex Listed Stocks, NYSE Arca Listed Stocks, BATS Listed Stocks and CHX Solely Listed Stocks] and (b) the NASDAQ Unlisted Trading Privileges Plan [as the exclusive SIP for all NASDAQ Listed Stocks].

b. *Sharing.* A Participating Organization shall make available to FINRA information necessary to assist FINRA in fulfilling the Regulatory Responsibilities assumed under the terms of this Agreement. Such information shall include *any* information collected by a Participating Organization in the course of performing its regulatory obligations under the Act, including information relating to an on-going disciplinary investigation or action against a member, the amount of a fine imposed on a member, financial information, or information regarding proprietary trading systems gained in the course of examining a member ("Regulatory Information"). This Regulatory Information shall be used by FINRA solely for the purposes of fulfilling its Regulatory Responsibilities.

c. *No Waiver of Privilege.* The sharing of documents or information between the parties pursuant to this Agreement shall not be deemed a waiver as against third parties of regulatory or other privileges relating to the discovery of documents or information.

d. *Intellectual Property.*

(i) *Existing Intellectual Property.* FINRA is and will remain the owner of all right, title and interest in and to the proprietary Intellectual Property it employs in the provision of regulation hereunder (including the SONAR [and Stock Watch] system[s]), and any derivative works thereof. To the extent certain elements of FINRA's systems, or portions thereof, may be licensed or leased from third parties, all such third party elements shall remain the property of such third parties, as applicable. Likewise, any other Participating Organization is and will remain the owner of all right, title and interest in and to its own existing proprietary Intellectual Property.

(ii) *Enhancements to Existing Intellectual Property or New Developments.* In the event FINRA (a) makes any changes, modifications or enhancements to its Intellectual Property for any reason, or (b) creates any newly developed Intellectual Property for any reason, including as a result of requested enhancements or new development by the Exchange Committee (collectively, the "New IP"), the Participating Organizations acknowledge and agree that FINRA shall be deemed the owner of the New IP created by it (and any derivative works thereof), and shall retain all right, title and interest therein and thereto, and each other Participating Organization hereby irrevocably assigns, transfers and conveys to FINRA without further consideration all of its right, title and interest in or to all such New IP (and any derivative works thereof).

(iii) *Fees for New IP.* FINRA will not charge the Participating Organizations any fees for any New IP created and used by FINRA; provided, however, that FINRA will be permitted to charge fees for software maintenance work performed on systems used in the discharge of its duties hereunder.

[12]*11. Special or Cause Examinations.* Nothing in this Agreement shall restrict or in any way encumber the right of a party to conduct special or cause examinations of Common FINRA Members as any party, in its sole discretion, shall deem appropriate or necessary.

[13]*12. Dispute Resolution Under this Agreement.*

a. *Negotiation.* The parties to this Agreement will attempt to resolve any disputes through good faith negotiation and discussion, escalating such discussion up through the appropriate management levels until reaching the executive management level. In the event a dispute cannot be settled through these means, the parties shall refer the dispute to binding arbitration.

b. *Binding Arbitration.* All claims, disputes, controversies, and other matters in question between the parties to this Agreement arising out of or relating to this Agreement or the breach thereof that cannot be resolved by the parties will be resolved through binding arbitration. Unless otherwise agreed by the parties, a dispute submitted to binding arbitration pursuant to this paragraph shall be resolved using the following procedures:

(i) The arbitration shall be conducted in the city of New York in accordance with the Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof; and

(ii) There shall be three arbitrators, and the chairperson of the arbitration panel shall be an attorney.

[14]*13. Limitation of Liability.* As between the Participating Organizations, no Participating Organization, including its respective directors, governors, officers, employees and agents, will be liable to any other Participating Organization, or its directors, governors, officers, employees and agents, for any liability, loss or damage resulting from any delays, inaccuracies, errors or omissions with respect to its performing or failing to perform regulatory responsibilities, obligations, or functions, except (a) as otherwise provided for under the Act, (b) in instances of a Participating Organization's gross negligence, willful misconduct or reckless disregard with respect to another Participating Organization, (c) in instances of a breach of confidentiality obligations owed to another Participating Organization, or (d) in the case of any Participating Organization paying fees hereunder, for any payments due. The Participating Organizations understand and agree that the Regulatory Responsibilities are being performed on a good faith and best effort basis and no warranties, express or implied, are made by any Participating Organization to any other Participating Organization with respect to any of the responsibilities to be performed hereunder. This paragraph is not intended to create liability of any Participating Organization to any third party.

[15]*14. SEC Approval.*

a. The parties agree to file promptly this Agreement with the SEC for its review and approval. FINRA shall file this Agreement on behalf, and with the explicit consent, of all Participating Organizations.

b. If approved by the SEC, the Participating Organizations will notify their members of the general terms of this Agreement and of its impact on their members.

[16]*15. Subsequent Parties; Limited Relationship.* This Agreement shall inure to the benefit of and shall be binding upon the Participating Organizations hereto and their respective legal representatives, successors, and assigns. Nothing in this Agreement, expressed or implied, is intended or shall: (a) Confer on any person other than the Participating Organizations hereto, or their respective legal representatives, successors, and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, (b) constitute the Participating Organizations hereto partners or participants in a joint venture, or (c) appoint one Participating Organization the agent of the other.

[17]*16. Assignment.* No Participating Organization may assign this Agreement without the prior written consent of all the other Participating Organizations, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that any Participating Organization may assign this Agreement to a corporation controlling, controlled by or under common control with the Participating Organization without the prior written consent of any other party.

[18]*17. Severability.* Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

[19]*18. Termination.*

a. Any Participating Organization may cancel its participation in this Agreement at any time, provided that it has given 180 days written notice to the other Participating Organizations (or in the case of a change of control in ownership of a Participating Organization, such other notice time period as that Participating Organization may choose), and provided that such termination has been approved by the SEC. The cancellation of its participation in this Agreement by any Participating Organization shall not terminate this Agreement as to the remaining Participating Organizations.

b. The Regulatory Responsibilities assumed under this Agreement by FINRA may be terminated by FINRA

against any Participating Organization as follows. The Participating Organization will have thirty (30) days from receipt to satisfy the invoice. If the Participating Organization fails to satisfy the invoice within thirty (30) days of receipt ("Default"), FINRA will notify the Participating Organization of the Default. The Participating Organization will have thirty (30) days from receipt of the Default notice to satisfy the invoice.

c. FINRA will have the right to terminate the Regulatory Responsibilities assumed under this Agreement if a Participating Organization has Defaulted in its obligation to pay the invoice on more than three (3) occasions in any rolling twenty-four (24) month period.

[20]*19. Intermarket Surveillance Group ("ISG").* In order to participate in this Agreement, all Participating Organizations to this Agreement must be members of the ISG.

[21]*20. General.* The Participating Organizations agree to perform all acts and execute all supplementary instruments or documents that may be reasonably necessary or desirable to carry out the provisions of this Agreement.

[22]*21. Liaison and Notices.* All questions regarding the implementation of this Agreement shall be directed to the persons identified below, as applicable. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon (i) actual receipt by the notified party or (ii) constructive receipt (as of the date marked on the return receipt) if sent by certified or registered mail, return receipt requested, to the following addresses:

* * * * *

[23]*22. Confidentiality.* The parties agree that documents or information shared shall be held in confidence, and used only for the purposes of carrying out their respective regulatory obligations under this Agreement. No party shall assert regulatory or other privileges as against the other with respect to Regulatory Information that is required to be shared pursuant to this Agreement, as defined by paragraph [11]*10,* above.

[24]*23. Regulatory Responsibility.* Pursuant to Section 17(d)(1)(A) of the Act, and Rule 17d–2 thereunder, the Participating Organizations jointly and severally request the SEC, upon its approval of this Agreement, to relieve the Participating Organizations, jointly and severally, of any and all responsibilities with respect to the matters allocated to FINRA pursuant to this Agreement for purposes of §§ 17(d) and 19(g) of the Act.

[25]*24. Governing Law.* This Agreement shall be deemed to have been made in the State of New York, and shall be construed and enforced in accordance with the law of the State of New York, without reference to principles of conflicts of laws thereof. Each of the parties hereby consents to submit to the jurisdiction of the courts of the State of New York in connection with any action or proceeding relating to this Agreement.

[26]*25. Survival of Provisions.* Provisions intended by their terms or context to survive and continue notwithstanding delivery of the regulatory services by FINRA, the payment of the Fees by the Participating Organizations, and any expiration of this Agreement shall survive and continue.

[27]*26. Amendment.*

a. This Agreement may be amended to add a new Participating Organization, provided that such Participating Organization does not assume regulatory responsibility, solely by an amendment executed by FINRA and such new Participating Organization. All other Participating Organizations expressly consent to allow FINRA to add new Participating Organizations to this Agreement as provided above. FINRA will promptly notify all Participating Organizations of any such amendments to add a new Participating Organization.

b. All other amendments must be approved by each Participating Organization. All amendments, including adding a new Participating Organization, must be filed with and approved by the SEC before they become effective.

[28]*27. Effective Date.* The Effective Date of this Agreement will be the date the SEC declares this Agreement to be effective pursuant to authority conferred by § 17(d) of the Act, and SEC Rule 17d–2 thereunder.

[29]*28. Counterparts.* This Agreement may be executed in any number of counterparts, including facsimile, each of which will be deemed an original, but all of which taken together shall constitute one single agreement between the parties.

* * * * *

Exhibit A: Common Insider Trading Rules

1. Securities Exchange Act of 1934 Section 10(b), and rules and regulations promulgated there under in connection with insider trading, including SEC Rule 10b–5 (as it pertains to insider trading), which states that:

Rule 10b–5—Employment of Manipulative and Deceptive Devices

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

a. To employ any device, scheme, or artifice to defraud,

b. To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

c. To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

2. Securities Exchange Act of 1934 Section 17(a), and rules and regulations promulgated there under in connection with insider trading, including SEC Rule 17a–3 (as it pertains to insider trading).

3. The following SRO Rules as they pertain to violations of insider trading:

FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade)

FINRA Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices)

FINRA [NASD] Rule [3010]*3110* (Supervision)

[FINRA NASD Rule 3110(a) and (c) (Books and Records; Financial Condition)]

FINRA Rule 4511 (General Requirements)

FINRA Rule 4512 (Customer Account Information)

[NYSE Rule 342 (Offices—Approval, Supervision and Control)]

NYSE Rule 440 (Books and Records)

NYSE Rule 476(a) (Disciplinary Proceedings Involving Charges Against Members, Member Organizations, Principal Executives, Approved Persons, Employees, or Others)

NYSE Rule 2010 (Standards of Commercial Honor and Principles of Trade)

NYSE Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices)

NYSE Rule 3110 (Supervision)

NYSE MKT General and Floor Rule 3(j) (General Prohibitions and Duty to Report)

[NYSE Amex Equities Rule 342 (Offices—Approval, Supervision and Control)]

NYSE [Amex]*MKT* Equities Rule 440 (Books and Records)
NYSE [Amex]*MKT* Equities Rule 476(a) (Disciplinary Proceedings Involving Charges Against Members, Member Organizations, Principal Executives, Approved Persons, Employees, or Others)
NYSE [Amex]*MKT* Equities Rule 2010 (Standards of Commercial Honor and Principles of Trade)
NYSE [Amex]*MKT* Equities Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices)
NYSE MKT Equities Rule 3110 (Supervision)
NASDAQ [OMX] Rule 2110*A* (Standards of Commercial Honor and Principles of Trade)
NASDAQ [OMX] Rule 2120 (Use of Manipulative, Deceptive or Other Fraudulent Devices)
NASDAQ [OMX] Rule 3010 (Supervision)
[NASDAQ [OMX] Rule 3110(a) and (c) (Books and Records; Financial Condition)]
NASDAQ Rule 4511A (General Requirements
NASDAQ Rule 4512A (Customer Account Information)
CHX Article 8, Rule 3 (Fraudulent Acts)
CHX Article 9, Rule 2 (Just & Equitable Trade Principles)
CHX Article 11, Rule 2 (Maintenance of Books and Records)
CHX Article 6, Rule 5 (Supervision of Registered Persons and Branch and Resident Offices)
[CBOE Rule 4.1 (Practices inconsistent with just and equitable principles)]
[CBOE Rule 4.2 (adherence to law)]
[CBOE Rule 4.7 (Manipulation)]
[CBOE Rule 4.18 (Prevention of the misuse of material non public information)]
NASDAQ [OMX] PHLX Rule 707 (Conduct Inconsistent with Just and Equitable Principles of Trade)
NASDAQ [OMX] PHLX Rule 748 (Supervision)
NASDAQ [OMX] PHLX Rule 760 (Maintenance, Retention and Furnishing of Books, Records and Other Information)
NASDAQ [OMX] PHLX Rule 761 (Supervisory Procedures Relating to ITSFEA and to Prevention of Misuse or Material Nonpublic Information)
NASDAQ [OMX] PHLX Rule 782 (Manipulative Operations)
NYSE Arca Equities Rule 2.24 (ETP Books and Records)
NYSE Arca Equities Rule 5.1(a)(2)(v)(D) (General Provisions and Unlisted Trading Privileges)
NYSE Arca Equities Rule 6.3 (Prevention of the Misuse of Material, Nonpublic Information)
NYSE Arca Equities Rule 6.2(b) (Prohibited Acts (J&E))
NYSE Arca Equities Rule 6.1 (Adherence to Law)
NYSE Arca Equities Rule 6.18 (Supervision)
NYSE Arca Equities Rule 9.1(c) (Office Supervision)
NYSE Arca Equities Rule 9.2(b) (Account Supervision)
NYSE Arca Equities Rule 9.2(c) (Customer Records)
NYSE Arca Equities Rule 2010 (Standards of Commercial Honor and Principles of Trade)
NYSE Arca Equities Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices)
NSX Rule 3.1 (Business Conduct of ETP Holders)
NSX Rule 3.2 (Violations Prohibited)
NSX Rule 3.3 (Use of Fraudulent Devices)
NSX Rule 4.1 (Requirements)
NSX Rule 5.1 (Written Procedures)
NSX Rule 5.3 (Records)
NSX Rule 5.5 (Chinese Wall Procedures)
NSX Rule 12.4 (Manipulative Transactions)
NASDAQ [OMX] BX Rule 2110 (Standards of Commercial Honor and Principles of Trade)
NASDAQ [OMX] BX Rule 2120 (Use of Manipulative, Deceptive or Other Fraudulent Devices)
NASDAQ [OMX] BX Rule 3010 (Supervision)
NASDAQ [OMX] BX Rule 3110(a) and (c) (Books and Records; Financial Condition)
[BATS]*BZX* Rule 3.1 (Business Conduct of Members)
[BATS]*BZX* Rule 3.2 (Violations Prohibited)
[BATS]*BZX* Rule 3.3 (Use of Fraudulent Devices)
[BATS]*BZX* Rule 4.1 (Requirements)
[BATS]*BZX* Rule 5.1 (Written Procedures)
[BATS]*BZX* Rule 5.3 (Records)
[BATS]*BZX* Rule 5.5 (Prevention of the Misuse of Material, Non-Public Information)
[BATS]*BZX* Rule 12.4 (Manipulative Transactions)
BYX Rule 3.1 (Business Conduct of ETP Holders)
BYX Rule 3.2 (Violations Prohibited)
BYX Rule 3.3 (Use of Fraudulent Devices)
BYX Rule 4.1 (Requirements)
BYX Rule 5.1 (Written Procedures)
BYX Rule 5.3 (Records)
BYX Rule 5.5 (Prevention of the Misuse of Material, Non-Public Information)
BYX Rule 12.4 (Manipulative Transactions)
EDGA *Rule* 3.1 (Business Conduct of Members)
EDGA *Rule* 3.2 (Violations Prohibited)
EDGA *Rule* 3.3 (Use of Fraudulent Devices)
EDGA *Rule* 4.1 (Requirements)
EDGA *Rule* 5.1 (Written Procedures)
EDGA *Rule* 5.3 (Records)
EDGA *Rule* 5.5 (Prevention of Misuse of Material, Nonpublic Information)
EDGA *Rule* 12.4 (Manipulative Transactions)
EDGX *Rule* 3.1 (Business Conduct of Members)
EDGX *Rule* 3.2 (Violations Prohibited)
EDGX *Rule* 3.3 (Use of Fraudulent Devices)
EDGX *Rule* 4.1 (Requirements)
EDGX *Rule* 5.1 (Written Procedures)
EDGX *Rule* 5.3 (Records)
EDGX *Rule* 5.5 (Prevention of Misuse of Material, Nonpublic Information)
EDGX *Rule* 12.4 (Manipulative Transactions)
IEX Rule 3.110 (Business Conduct of Members)
IEX Rule 3.120 (Violations Prohibited)
IEX Rule 3.130 (Use of Fraudulent Devices)
IEX Rule 4.511 (General Requirements)
IEX Rule 4.512 (Customer Account Information)
IEX Rule 5.110 (Supervision)
IEX Rule 5.150 (Prevention of Misuse of Material, Non-Public Information)
IEX Rule 10.140 (Manipulative Transactions)

Exhibit B: Fee Schedule

1. *Fees.* FINRA shall charge each Participating Organization a Quarterly Fee in arrears for the performance of FINRA's Regulatory Responsibilities under the Plan (each, a "Quarterly Fee," and together, the "Fees").

a. *Quarterly Fees.*

(1) Quarterly Fees for each Participating Organization will be charged by FINRA according to the Participating Organization's "Percentage of Publicly Reported Trades" occurring over three-month billing periods. The "Percentage of Publicly Reported Trades" shall equal a Participating Organization's number of reported [Listed]*NMS* Stock trades during the relevant period (the "Numerator"), divided by the total number of all [Listed]*NMS* Stock trades for the same period (the "Denominator"). For purposes of clarification, ADF and Trade Reporting Facility ("TRF") activity will be included in the Denominator. Additionally, with regard to TRFs, TRF trade volume will be charged to FINRA. Consequently, for purposes of calculating the Quarterly Fees, the volume for each Participant Organization's TRF will be calculated separately (that is, TRF volume will be broken out from the Participating

Organization's overall Percentage of Publicly Reported Trades) and the fees for such will be billed to FINRA in accordance with paragraph 1a.(2), rather than to the applicable Participating Organization.

(2) The Quarterly Fees shall be determined by FINRA in the following manner for each Participating Organization:

(a) Less than 1.0%: If the Participating Organization's Percentage of Publicly Reported Trades for the relevant three-month billing period is less than 1.0%, the Quarterly Fee shall be $6,250, per quarter ("Static Fee");

(b) Less than 2.0% but No Less than 1.0%: If the Participating Organization's Percentage of Publicly Reported Trades for the relevant three-month billing period is less than 2.0% but no less than 1.0%, the Quarterly Fee shall be $18,750, per quarter ("Static Fee");

(c) 2.0% or Greater: If the Participating Organization's Percentage of Publicly Reported Trades for the relevant three-month billing period is 2.0% or greater, the Quarterly Fee shall be the amount equal to the Participating Organization's Percentage of Publicly Reported Trades multiplied by FINRA's total charge ("Total Charge") for its performance of Regulatory Responsibilities for the relevant three-month billing period.

(3) Increases in Static Fees. FINRA will re-evaluate the Quarterly Fees on an annual basis during the annual budget process outlined in paragraph 1.c. below. During each annual re-evaluation, FINRA will have the discretion to increase the Static Fees by a percentage no greater than the percentage increase in the Final Budget over the preceding year's Final Budget. Any changes to the Static Fees shall not require an amendment to this Agreement, but rather shall be memorialized through the budget process.

(4) Increases in Total Charges. Any change in the Total Charges (whether a Final Budget increase or any mid year change) shall not require an amendment to this Agreement, but rather shall be memorialized through the budget process.

b. *Source of Data.* For purposes of calculation of the Percentage of Publicly Reported Trades for each Participating Organization, FINRA shall use (a) the Consolidated Tape Association ("CTA") [as the exclusive securities information processor ("SIP") for all NYSE Listed Stocks, NYSE Amex Listed Stocks, NYSE Arca Listed Stocks, BATS Listed Stocks and CHX Solely Listed Stocks], and (b) the Unlisted Trading Privileges Plan [as the exclusive SIP for NASDAQ Listed Stocks].

c. *Annual Budget Forecast.* FINRA will notify the Participating Organizations of the forecasted costs of its insider trading program for the following calendar year by close of business on October 15 of the then-current year (the "Forecasted Budget"). FINRA shall use best efforts to provide as accurate a forecast as possible. FINRA shall then provide a final submission of the costs following approval of such costs by its Board of Governors (the "Final Budget"). Subject to paragraph 1d. below, in the event of a difference between the Forecasted Budget and the Final Budget, the Final Budget will govern.

d. *Increases in Fees over Five Percent.*

(1) In the event that any proposed increase to Fees by FINRA for a given calendar year (which increase may arise either during the annual budgetary forecasting process or through any mid-year increase) will result in a cumulative increase in such calendar year's Fees of more than five percent (5%) above the preceding calendar year's Final Budget (a "Major Increase"), then senior management of any Participating Organization (a) that is a Listing Market or (b) for which the Percentage of Publicly Reported Trades is then currently twenty percent (20%) or greater, shall have the right to call a meeting with the senior management of FINRA in order to discuss any disagreement over such proposed Major Increase. By way of example, if FINRA provides a Final Budget for 2011 that represents an 4% increase above the Final Budget for 2010, the terms of this paragraph 1.d.(1) shall not apply; if, however, in April of 2011, FINRA notifies the Exchange Committee of an increase in Fees that represents an additional 3% increase above the Final Budget for 2010, then the increase shall be deemed a Major Increase, and the terms of this paragraph 1.d.(1) shall become applicable (*i.e.*, 4% and 3% represents a cumulative increase of 7% above the 2010 Final Budget).

(2) In the event that senior management members of the involved parties are unable to reach an agreement regarding the proposed Major Increase, then the matter shall be referred back to the Exchange Committee for final resolution. Prior to the matter being referred back to the Exchange Committee, nothing shall prohibit the parties from conferring with the SEC. Resolution shall be reached through a vote of no fewer than all Participating Organizations seated on the Exchange Committee, and a simple majority shall be required in order to reject the proposed Major Increase.

e. *Time Tracking.* FINRA shall track the time spent by staff on insider trading responsibilities under this Agreement; however, time tracking will not be used to allocate costs.

2. *Invoicing and Payment.* FINRA shall invoice each Participating Organization for the Quarterly Fee associated with the regulatory activities performed pursuant to this Agreement during the previous three-month billing period within forty five (45) days of the end of such previous 3-month billing period. A Participating Organization shall have thirty (30) days from date of invoice to make payment to FINRA on such invoice. The invoice will reflect the Participating Organization's Percentage of Publicly Reported Trades for that billing period.

3. *Disputed Invoices; Interest.* In the event that a Participating Organization disputes an invoice or a portion of an invoice, the Participating Organization shall notify FINRA in writing of the disputed item(s) within fifteen (15) days of receipt of the invoice. In its notification to FINRA of the disputed invoice, the Participating Organization shall identify the disputed item(s) and provide a brief explanation of why the Participating Organization disputes the charges. FINRA may charge a Participating Organization interest on any undisputed invoice or the undisputed portions of a disputed invoice that a Participating Organization fails to pay within thirty (30) days of its receipt of such invoice. Such interest shall be assessed monthly. Interest will mean one and one half percent per month, or the maximum allowable under applicable law, whichever is less.

4. *Taxes.* In the event any governmental authority deems the regulatory activities allocated to FINRA to be taxable activities similar to the provision of services in a commercial context, the other Participating Organizations agree that they shall bear full responsibility, on a joint and several basis, for the payment of any such taxes levied on FINRA, or, if such taxes are paid by FINRA directly to the governmental authority, the other Participating Organizations agree that they shall reimburse FINRA for the amount of any such taxes paid.

5. *Audit Right; Record Keeping.*

a. *Audit Right.*

(i) Once every rolling twelve (12) month period, FINRA shall permit no more than one audit (to be performed by one or more Participating Organizations) of the Fees charged by FINRA to the Participating Organizations hereunder and a detailed cost analysis supporting

such Fees (the "Audit"). The Participating Organization or Organizations that conduct this Audit will select a nationally-recognized independent auditing firm (or may use its regular independent auditor, providing it is a nationally-recognized auditing firm) ("Auditing Firm") to act on its, or their behalf, and will provide reasonable notice to other Participating Organizations of the Audit. FINRA will permit the Auditing Firm reasonable access during FINRA's normal business hours, with reasonable advance notice, to such financial records and supporting documentation as are necessary to permit review of the accuracy of the calculation of the Fees charged to the Participating Organizations. The Participating Organization, or Organizations, as applicable, other than FINRA, shall be responsible for the costs of performing any such audit.

(ii) If, through an Audit, the Exchange Committee determines that FINRA has inaccurately calculated the Fees for any Participating Organization, the Exchange Committee will promptly notify FINRA in writing of the amount of such difference in the Fees, and, if applicable, FINRA shall issue a reimbursement of the overage amount to the relevant Participating Organization(s), less any amount owed by the Participating Organization under any outstanding, undisputed invoice(s). If such an Audit reveals that any Participating Organization paid less than what was required pursuant to the Agreement, then that Participating Organization shall promptly pay FINRA the difference between what the Participating Organization owed pursuant to the Agreement and what that Participating Organization originally paid FINRA. If FINRA disputes the results of an Audit regarding the accuracy of the Fees, it will submit the dispute for resolution pursuant to the dispute resolution procedures in paragraph [13]*12* of the Agreement.

(iii) In the event that through the review of any supporting documentation provided during the Audit, any one or more Participating Organizations desire to discuss with FINRA the supporting documentation and any questions arising therefrom with regard to the manner in which regulation was conducted, the Participating Organization(s) shall call a meeting with FINRA. FINRA shall in turn notify the Exchange Committee of this meeting in advance, and all Participating Organizations shall be welcome to attend (the "Fee Analysis Meeting"). The parties to this Agreement acknowledge and agree that while FINRA commits to discuss the supporting documentation at the Fee Analysis Meeting, FINRA shall not be subject, by virtue of the above Audit rights or any discussions during the Fee Analysis Meeting or otherwise, to any limitation whatsoever, other than the Increase in Fee provisions set forth in paragraph 1.d. of this Exhibit, on its discretion as to the manner and means by which it conducts its regulatory efforts in its role as the SRO primarily liable for regulatory decisions under this Agreement. To that end, no disagreement among the Participating Organizations as to the manner or means by which FINRA conducts its regulatory efforts hereunder shall be subject to the dispute resolution procedures hereunder, and no Participating Organization shall have the right to compel FINRA to alter the manner or means by which it conducts its regulatory efforts. Further, a Participating Organization shall not have the right to compel a rebate or reassessment of fees for services rendered, on the basis that the Participating Organization would have conducted regulatory efforts in a different manner than FINRA in its professional judgment chose to conduct its regulatory efforts.

b. *Record Keeping.* In anticipation of any audit that may be performed by the Exchange Committee under paragraph 5.a. above, FINRA shall keep accurate financial records and documentation relating to the Fees charged by it under this Agreement.

Exhibit C: Reports

FINRA shall provide the following information in reports to the Exchange Committee, which information covers activity occurring under this Agreement:

1. *Alert Summary Statistics:* Total number of surveillance system alerts generated by quarter along with associated number of reviews and investigations. In addition, this paragraph shall also reflect the number of reviews and investigations originated from a source other than an alert. A separate table would be presented for *the trading activity of the NMS Stocks listed on each Participating Organization's exchange.* [NYSE Listed Stock, NYSE Amex Listed Stock, NYSE Arca Listed Stock, NASDAQ Listed Stock, BATS Listed Stock and CHX Solely Listed Stock trading activity.]

2008	Surveillance alerts	Investigations
1st Quarter.		
2nd Quarter.		
3rd Quarter.		
4th Quarter.		
2008 Total.		

2. *Aging of Open Matters:* Would reflect the aging for all currently open matters for the quarterly period being reported. A separate table would be presented for *the trading activity of the NMS Stocks listed on each Participating Organization's exchange.* [NYSE Listed Stock, NYSE Amex Listed Stock, NYSE Arca Listed Stock, NASDAQ Listed Stock, BATS Listed Stock and CHX Solely Listed Stock trading activity.]

Example:

	Surveillance alerts	Investigations
0–6 months.		
6–9 months.		
9–12 months.		
12+ months.		
Total.		

3. *Timeliness of Completed Matters:* Would reflect the total age of those matters that were completed or closed during the quarterly period being reported. FINRA will provide total referrals to the SEC.

Example:

	Surveillance alerts	Investigations
0–6 months.		
6–9 months.		
9–12 months.		
12+ months.		
Total.		

4. *Disposition of Closed Matters:* Would reflect the disposition of those matters that were completed or closed during the quarterly period being reported. A separate table would be presented for *the trading activity of the NMS Stocks listed on each Participating Organization's exchange.* [NYSE Listed Stock, NYSE Amex Listed Stock, NYSE Arca Listed Stock, NASDAQ Listed Stock, BATS Listed Stock and CHX Solely Listed Stock trading activity.]

Example:

	Surveillance YTD	Investigations YTD
No Further Review.		
Letter of Caution/ Admonition/Fine.		
Referred to Legal/ Enforcement.		
Referred to SEC/ SRO.		
Merged.		
Other.		
Total.		

5. *Pending Reviews.* In addition to the above reports, the Chief Regulatory Officer (CRO) (or his or her designee) of any Participating Organization that is also a Listing Market [(including CHX)] may inquire about pending reviews involving stocks listed on that Participating Organization's market. FINRA will respond to such inquiries from a CRO; provided, however, that (a) the CRO must hold any information provided by FINRA in confidence and (b) FINRA will not be compelled to provide information in contradiction of any mandate, directive or order from the SEC, US Attorney's Office, the Office of any State Attorney General or court of competent jurisdiction.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number 4–566 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number 4–566. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan that are filed with the Commission, and all written communications relating to the proposed plan between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the plan also will be available for inspection and copying at the principal offices of the Participating Organizations. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4–566 and should be submitted on or before August 30, 2016.

V. Discussion

The Commission finds that the Plan, as proposed to be amended, is consistent with the factors set forth in Section 17(d) of the Act [14] and Rule 17d–2 thereunder [15] in that it is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. The Commission continues to believe that the Plan, as amended, should reduce unnecessary regulatory duplication by allocating regulatory responsibility for the surveillance, investigation, and enforcement of Common Rules to FINRA. Accordingly, the proposed amendment to the Plan promotes efficiency by consolidating these regulatory functions in a single SRO.

Under paragraph (c) of Rule 17d–2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that appropriate notice and comment can take place after the proposed amendment is effective. In particular, the purpose of the amendment is to add IEX as a Participating Organization and reflect that IEX will be a Listing Market (which will expand the Plan's coverage of NMS Stocks to include equity securities listed on IEX), remove CBOE as a Participating Organization and update the names of certain other Participating Organizations, update defined terms, and reflect updates to the list of Common Rules. The Commission notes that the most recent prior amendment to the Plan, which, among other things, reflected the addition of BATS as a Listing Market, was published for comment and the Commission did not receive any comments thereon.[16] The Commission believes that the current amendment to the Plan does not raise any new regulatory issues that the Commission has not previously considered, and therefore believes that the amended Plan should become effective without any undue delay.

[14] 15 U.S.C. 78q(d).

[15] 17 CFR 240.17d–2.

[16] *See supra* note 11.

VI. Conclusion

This order gives effect to the amended Plan submitted to the Commission that is contained in File No. 4–566.

It is therefore ordered, pursuant to Section 17(d) of the Act,[17] that the Plan, as amended, filed with the Commission pursuant to Rule 17d–2 on July 21, 2016, is hereby approved and declared effective.

It is further ordered that the Participating Organizations are relieved of those regulatory responsibilities allocated to FINRA under the amended Plan to the extent of such allocation.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–18793 Filed 8–8–16; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78q(d).

[18] 17 CFR 200.30–3(a)(34).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78475; File No. SR–IEX–2016–05]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 11.330 To Combine the TOPS and LAST Data Products and Make Minor Correcting and Conforming Changes to the Description of TOPS Viewer

August 3, 2016.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 28, 2016, the Investors Exchange LLC ("IEX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 ("Act"),[4] and Rule 19b–4 thereunder,[5] Investors Exchange LLC

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

("IEX" or "Exchange") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend Rule 11.330 (Data Products) to (i) combine the TOPS and LAST data products to eliminate the LAST data product and add execution information to the TOPS data product, and (2) make minor correcting and conforming changes to the description of TOPS Viewer. The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[6]

The text of the proposed rule change is available at the Exchange's Web site at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement [sic] may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.330 (Data Products) to combine the TOPS and LAST data products, to eliminate the LAST data product, and to add execution information to the TOPS data product. Currently, Rule 11.330(a)(1) specifies that the TOPS data product is an uncompressed data feed that offers aggregated top of book quotations for all displayed orders resting on the Order Book, while paragraph (a)(3) specifies that the LAST data product is an uncompressed data feed that offers only execution information based on equities orders entered into the System (*i.e.* last sale information). IEX has determined to add the information contemplated to be provided in LAST into TOPS.

Accordingly, the Exchange proposes to amend Rule 11.330(a)(1) to provide that TOPS is an uncompressed data feed that offers aggregated top of book quotations for all displayed orders resting on the Order Book and execution information for executions on the Exchange (*i.e.,* last sale information). As proposed, TOPS will disseminate, on a real-time basis,[7] (1) the aggregate best bid and offer ("BBO") of all displayed orders for securities traded on IEX; and (2) the price, size, and time of execution for each transaction executed on IEX. For the sake of clarity, the Exchange also proposes to make certain non-substantive changes to the existing description of LAST as it is incorporated into the TOPS description. Specifically, rather than describe execution information as "based on equity orders entered into the System," which technically could include executions on away exchanges of orders routed to such exchanges, the proposed text would clarify IEX includes execution information for orders executed on the Exchange. All information that will be provided in TOPS will also be reported under the Consolidated Tape Association ("CTA") Plan or the Nasdaq/UTP Plan. The Exchange will release information to TOPS and TOPS Viewer in compliance with Rule 603(a) of Regulation NMS, which requires that exchanges distribute market data on terms that are "fair and reasonable" and "not unreasonably discriminatory," and prohibits an exchange from releasing data relating to quotes and trades to its customers through proprietary feeds before it sends its quotes and trade reports for inclusion in the consolidated feeds.[8]

The Exchange also proposes to make minor correcting and conforming changes to Rule 11.330(a)(2), which describes TOPS Viewer. Currently, as specified therein, TOPS Viewer is described as a data feed, currently available through the Exchange's public Web site, that offers two-sided quotations for all displayed orders resting on the Order Book as well as the aggregate volume traded execution information based on orders entered into the System. TOPS and TOPS Viewer contain the same information, delivered in different manners. TOPS provides the specified information only through an application programming interface ("API") via the POP (an API is by definition not human readable). TOPS Viewer provides the specified information in both a human readable format on the Exchange's Web site as well as through an API from the Exchange's Web site.

IEX proposes to make three minor changes to the description of TOPS Viewer in subparagraph (a)(2) of Rule 11.330. First, IEX proposes a ministerial change to conform the description of the quotation information available through TOPS Viewer, in subparagraph (a)(2) of the Rule, to the description set forth in the description of TOPS in subparagraph (a)(1). Second, IEX proposes a correcting change to delete the word "aggregate" in the description because information will be provided for each execution, rather than on an aggregated basis. Third, IEX proposes to include the clarifying language proposed to be added to subparagraph (a)(1) of the rule to make clear that the execution information provided is for transactions executed on the Exchange (*i.e.,* last sale information).

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act[9] in general, and with Section 6(b)(5) of the Act,[10] in particular. TOPS and TOPS Viewer will be provided consistent with the purposes of Section 6(b)(5) of the Act.[11] Moreover, the proposed rule change is not designed to permit unfair discrimination among customers, issuers, and brokers; and is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposed rule change is designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system by providing quotation and transaction information to market participants. The Exchange also believes this proposal is consistent with Section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing market participants with the option to receive such information otherwise than under the CTA and Nasdaq/UTP Plans.

[6] 17 CFR 240.19b–4(f)(6)(iii).

[7] Rule 11.510(b)(2) describes the application of the POP to outbound communications from the Exchange, which impacts TOPS. As specified therein, the POP "is designed to provide all Participants with an equivalent 350 microseconds of latency from the System at the primary data center to the Exchange-provided network interface at the IEX POP."

[8] *See* Regulation NMS, 70 FR 37,496, 37,567 (June 29, 2005) (adopting release); see also Concept Release, 75 FR at 3601 (January 21, 2010).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) [sic], (5).

[11] 15 U.S.C. 78f(b)(5).

Further, the proposal would not permit unfair discrimination because the information will be available to all market participants and market data vendors on an equivalent basis and without charge. In addition, any market participant that wishes to receive such information via the CTA and Nasdaq/UTP Plans will be able to do so. As noted above, the Exchange is simply proposing to include data elements contemplated to be included in LAST data product in TOPS, as well as to make minor correcting and conforming changes to the description of TOPS Viewer.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act [12] in that it supports (1) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (2) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[13] which provides that any national securities exchange which distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are fair and reasonable and not unreasonably discriminatory. As noted above, the Exchange will provide TOPS and TOPS Viewer to Members and other recipients of Exchange data on terms that are fair and reasonable and not unreasonably discriminatory in that TOPS and TOPS Viewer will be provided free of charge and TOPS Viewer is available to the public via the Exchange's Web site.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange is not proposing to charge a fee for the TOPS feed, and will make the feed available to market participants on a fair and impartial basis, and on terms that are not unreasonably discriminatory.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[12] 15 U.S.C. 78k–1.

[13] *See* 17 CFR 242.603.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) [14] of the Act and Rule 19b–4(f)(6) [15] thereunder. Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[16] The Exchange has asked the Commission to waive the 30-day operative delay, making this proposal operative upon filing. The Exhange argues that the proposed rule filing merely combines the data elements from the LAST data product into TOPS and TOPS Viewer, and makes minor conforming and correcting changes to Rule 11.330. According to the Exchange, waiver of the operative delay is, therefore, consistent with the protection of investors and the public interest, because it will allow the Exchange to implement the proposed rule change to coincide with IEX's launch of exchange operations during a security-by-security phase-in period beginning August 19, 2016, and thus provide operational simplification to Members and other recipients of Exchange data as well as a source of Exchange data free of charge otherwise than under the CTA and Nasdaq/UTP Plans, consistent with the protection of investors and the public interest. The Exchange further adds that waiver of the operative delay period will also enable the Exchange to make the minor correcting and clarifying changes described herein to coincide with IEX's launch of exchange operations.

The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. The Commission notes that the proposal would merely consolidate existing data products and make minor, clarifying changes to the descriptions of TOPS and TOPS Viewer. In the absence of a waiver of the operative delay, customers would have to subscribe to two data products to receive both top-of-book and last sale information when the Exchange begins operating on August 19, 2016, until the proposal becomes effective shortly thereafter. Waiving the operative delay would provide customers with the opportunity to receive a single, streamlined product with top-of-book and last sale information and would also provide customers with greater clarity about the content of the available products from the outset of the Exchange's launch of operations. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[18] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number* SR–IEX–2016–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–IEX–2016–05. This file number should be included on the subject line if email is used. To help the Commission process and review your

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78s(b)(2)(B).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–IEX–2016–05 and should be submitted on or before August 30, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–18795 Filed 8–8–16; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 9666]

International Security Advisory Board (ISAB); Meeting Notice Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App 10(a)(2), the Department of State announces a meeting of the International Security Advisory Board (ISAB) to take place on September 16, 2016, at the Department of State, Washington, DC.

Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App 10(d), and 5 U.S.C. 552b(c)(1), it has been determined that this Board meeting will be closed to the public because the Board will be reviewing and discussing matters properly classified in accordance with Executive Order 13526. The purpose of the ISAB is to provide the Department with a continuing source of independent advice on all aspects of arms control, disarmament, nonproliferation, political-military affairs, international security, and related aspects of public diplomacy. The agenda for this meeting will include classified discussions related to the Board's studies on current U.S. policy and issues regarding arms control, international security, nuclear proliferation, and diplomacy.

For more information, contact Christopher Herrick, Executive Director of the International Security Advisory Board, U.S. Department of State, Washington, DC 20520, telephone: (202) 647–9683.

Dated: July 19, 2016.

Christopher Herrick,

Executive Director, International Security Advisory Board, U.S. Department of State.

[FR Doc. 2016–18855 Filed 8–8–16; 8:45 am]

BILLING CODE 4710–27–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 290 (Sub–No. 386X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Charleston, S.C.

Norfolk Southern Railway Company (NSR) has filed a verified notice of exemption under 49 CFR pt. 1152 subpart F–*Exempt Abandonments* to abandon approximately 1.97 miles of rail line between milepost SC 0.33 and milepost SC 2.3 in Charleston, S.C. (the Line). The Line traverses United States Postal Service Zip Codes 29403 and 29405.

NSR has certified that: (1) No local traffic has moved over the Line for at least two years; (2) no overhead traffic has moved over the Line for at least two years and that overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 8, 2016, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 19, 2016. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 29, 2016, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW., Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemption is void ab initio.

NSR has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by August 12, 2016. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

[19] 17 CFR 200.30–3(a)(12).

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by NSR's filing of a notice of consummation by August 9, 2017, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at "*WWW.STB.DOT.GOV.*"

Decided: August 4, 2016.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2016–18867 Filed 8–8–16; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2015–0074; Notice 2]

Baby Jogger, LLC, Ruling on Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Ruling on petition for inconsequential noncompliance.

SUMMARY: Baby Jogger, LLC (Baby Jogger), has determined that certain Baby Jogger rear-facing infant seats and bases do not fully comply with paragraphs S5.5, S5.6, S5.8, and S8.1 of Federal Motor Vehicle Safety Standard (FMVSS) No. 213, *Child Restraint Systems.* Baby Jogger filed an associated report dated June 4, 2015, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Baby Jogger then petitioned NHTSA under 49 CFR part 556 requesting a decision that the subject noncompliance is inconsequential to motor vehicle safety.

ADDRESSES: For further information on this decision contact Zachary Fraser, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5754, facsimile (202) 366–3081.

SUPPLEMENTARY INFORMATION:

I. Overview: Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Baby Jogger submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the petition was published, with a 30-day public comment period, on September 8, 2015 in the **Federal Register** (80 FR 53914). No comments were received. To view the petition, and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number "NHTSA–2015–0074."

II. Child Restraints Involved: Affected are approximately 15,103 of the following Baby Jogger rear-facing infant seats and bases manufactured between November 3, 2014 and April 30, 2015:

- City GO Infant Car Seat/Model No. BJ64510
- City GO Infant Car Seat/Model No. BJ64529
- City GO Base for Infant Car Seat/Model No. BJ80400
- City GO Base for Infant Car Seat/Model No. BJ61500
- City Mini Infant Cars Seat/Stroller Travel System/Model No.BJ72510
- Vue Lite Infant Car Seat/Stroller Travel System/Model No. BJ70411
- Vue Lite Infant Car Seat/Stroller Travel System/Model No. BJ70424
- Vue Lite Infant Car Seat/Stroller Travel System/Model No. BJ70431

III. Noncompliances: Baby Jogger explains that the affected child restraints do not fully comply with numerous paragraphs of FMVSS No. 213 for the following reasons:

Paragraph S5.5.2—The required information in English is no smaller than 10 point type, but the Spanish information is smaller at about 7 point type. This only applies to models BJ64510 and BJ64529.

Paragraph S5.5.2(d)—The "manufactured in address" on the label is in about 8 font which is smaller than the required 10 point type.

Paragraph S5.5.2(m)—The required "Child restraints could be recalled for safety reasons. . ." text is on a black background with white text instead of black text on a white background.

Paragraph S5.5.2(g)(1)—The label has the "Follow all instructions. . ." ahead of the "Secure this child restraint" statement, instead of the reverse order as required. This noncompliance only affects models BJ64510 and BJ64529.

Paragraph S5.5.2(n)—The label has "This child restraint is certified for use in motor vehicles and aircraft." Other than the first word, no other words are capitalized.

Paragraph S5.5.2.(k)(3)(ii)—The message area measures 23.4 square cm on models BJ70411, BJ70424 and BJ70431 which is less than the minimum required message area of 30 square cm.

Paragraph S5.5.2.(k)(3)(iii)—On models BJ70411, BJ70424 and BJ70431 the red circle on the required pictogram is 29 mm in diameter which is less than the required 30 mm in diameter.

Paragraph S5.6.1.7—The instruction manuals do not include reference to the required Web site in the section regarding child restraint recalls.

Paragraph S5.6.3—The instruction manuals do not include the required statement "A snug strap should not allow any slack. . ."

Paragraph S5.8.2(a)(1)—The electronic registration form does not have the required statement "FOR YOUR CHILD'S CONTINUED SAFETY. . ."

Paragraph S5.8.1(b)(2)—Figure 9a requires minimum 10 percent screen tint on the lower half of the form. The form is missing the required tinting.

Paragraph S8.1—No instructions for installing the system in an aircraft passenger seat were provided.

IV. Summary of Baby Jogger's Analyses: Baby Jogger organized its reasoning to substantiate inconsequentiality into the following five issue groupings that it believes are similar between the numerous noncompliances:

a. Information Type Size/Capitalization/Presentation Order
b. Background Color
c. On-Product Label Message Area and Pictogram Sizes
d. Omitted Information
e. Spanish Language Type Size

Refer to Baby Jogger's petition for their complete reasoning and associated illustrations. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number "NHTSA–2015–0074."

Baby Jogger additionally informed NHTSA that they have corrected all labeling noncompliances and that all future production of the subject infant car seat/stroller systems and stand-alone units will be in full compliance with FMVSS No. 213.

In summation, Baby Jogger believes that the described noncompliance of the subject infant car seat/stroller systems and standalone units is inconsequential to motor vehicle safety, and that its

petition, to exempt Baby Jogger from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA'S Decision

NHTSA's Analysis: NHTSA examined the noncompliances that Baby Jogger described in its petition by category as follows:

a. Information Type Size/ Capitalization/Presentation Order

Baby Jogger printed labels required in paragraph S5.5.2 containing the place of manufacture in 8 point type rather than the required 10 point type. Baby Jogger believes the smaller type of the place of manufacture will not have any impact on child passenger safety. Baby Jogger failed to capitalize certain first letters of words contained in a label to instruct the user that the restraint is certified for use in motor vehicles and aircraft (paragraph S5.5.2(n)). Baby Jogger believes the lower case letters will not have any impact on child passenger safety. Finally, Baby Jogger printed on-product labels with two of the required statements of paragraph S5.5.2(g)(1)in incorrect order. Baby Jogger believes the out of order information will not have any impact on child passenger safety.

NHTSA does not concur with Baby Jogger's reasons for inconsequentiality stated above. With regard to the noncompliant 8 point font size, in the Final Rule establishing FMVSS No. 139, "New pneumatic radial tires for light vehicles," the agency stated "With respect to the size of the text on the placard and label, NHTSA learned from focus groups that the public generally prefers larger fonts in label text because it is easier to read. This helps ensure the placard and label will effectively convey the message to the reader." [1] Also, in a Notice of Proposed Rulemaking to upgrade dynamic testing in FMVSS No. 213, the agency originally proposed that labeling be in block lettering "3/32 inch high." [2] In the final rule to upgrade FMVSS No. 213, the agency changed this to "10 point type" and made other changes in response to a comment from General Motors.[3] General Motors stated "The proposal restricts the lettering to block lettering which results in instructions which are hard to read. We recommend that the body type for the label be specified to require at least a 10 point type, based on the character case with the option of using capitals or upper and lower case. We believe this specification will result in an easier to read label which, in turn, should promote more complete reading of the label by the consumer." [4]

For these reasons, NHTSA believes that font size less than the required 10 point type results in undesirable reading conditions which may cause eye strain and lead to the consumer failing to complete reading all the important safety instructions.

Baby Jogger failed to capitalize certain first letters of words contained in a label to instruct the user that the restraint is certified for use in motor vehicles and aircraft (paragraph S5.5.2(n)). Baby Jogger believes the lower case letters will not have any impact on child passenger safety.

The agency believes that failure to capitalize the required statements for proper use of child restraints may result in the consumer not adequately seeing and understanding the important safety information pertaining to proper use of the restraints.

Baby Jogger printed on-product labels with two of the required statements of paragraph S5.5.2(g)(1)in incorrect order. Baby Jogger believes the out of order information will not have any impact on child passenger safety because the statements are stand-alone and do not depend on another statement; therefore, the order of bulleted statements do affect the proper use of the car seat.

NHTSA disagrees with this reasoning. S5.5.2(g)(1) requires the heading "'WARNING! DEATH or SERIOUS INJURY can occur', capitalized as written and followed by bulleted statements in the following order:" (emphasis added). The order of statements follows a sequence beginning with instructions for rear-facing usage (S5.5.2(k)(1)), the maximum mass of children that can safely occupy the system (S.5.5.2(f)), the proper adjustment of the belts provided with the child restraint (S5.5.2(h)), instructions for securing a child restraint to the vehicle with a top tether strap (S5.5.2(j), and instructions for securing a booster seat to the vehicle using the vehicle's seat belt system (S5.5.2(i)). Baby Jogger incorrectly placed the statements required by S5.5.2(i) before the statements required by S5.5.2(j). The agency intentionally created a sequence of information that begins with instructions that call for interaction between the occupant and the restraint system, and ends with instructions that call for interaction between the occupant and the written instruction. If this sequence is disrupted by placing items out of order the user could become distracted and disregard important instructions.

The agency believes the above label noncompliances, in totality, have a compounding effect that may result in the user mistrusting information on the labels and thereby ignoring the labels.

b. Background Color

Baby Jogger notified the agency of the following two noncompliances related to background color:

(1) Paragraph S5.5.2 requires a label with information that child restraints could be recalled for safety reasons to be printed on a white background with black text. The noncompliant label contains the required information but is printed on black background with white text. Baby Jogger believes there is no indication that the reversed color combination will affect consumers' ability to understand the information on the label, and, therefore, the contrasting colors will not have any impact on child passenger safety.

NHTSA disagrees with Baby Jogger's assessment that the reversal of required text/label color will not affect the consumers' ability to understand the label. A visual inspection of the label in a photograph provided by Baby Jogger shows that the white text on the black background is not as easy to read as the compliant text located above. (This picture is located in the docket). The consumer may not read the label in its entirety if the ability to read the information on the label creates a challenge to the reader, which would result in the reader not being aware of important recall information.

(2) S5.8.1(b)(2) requires the registration form to conform to Figures 9a and 9b which require portions of the card to have a minimum 10% screen tint. The registration card provided by Baby Jogger does not have any screen tint. Baby Jogger believes that the missing screen tint will not have an impact on motor vehicle safety because there is no indication that the missing tint will affect consumers' ability to understand the information on the registration card.

The image of the registration card provided in Baby Jogger's petition would seem to support Baby Jogger's argument that the missing tint does not affect the ability to understand the required information provided on the registration card.

c. On-Product Label Message Area and Pictogram Sizes

Three of the Baby Jogger models have the air bag warning label required by

[1] 67 FR 69600; November 18, 2002.

[2] 43 FR 21470; May 18, 1978.

[3] 44 FR 72131; December 13, 1979.

[4] Docket no. 74–09–N04, comment #78, sent 12/1/78.

paragraph S5.5.2(k)(3)(ii) with a message area measuring 23.4 square cm which is less than the minimum required message area of 30 square cm. Baby Jogger does not believe the noncompliance creates a risk to motor vehicle safety because the label is prominently displayed and clearly communicates the required warning, and there is no indication that the sizing issue affects customers' ability to understand the warnings. In addition, the pictogram required in paragraph S5.5.2(k)(3)(iii) for the Baby Jogger label measures 29 millimeters in diameter which is less than the minimum required diameter of 30 millimeters. Baby Jogger believes that the pictogram that is 1 millimeter too small will not have any impact on child passenger safety.

In addition, Baby Jogger maintains for both noncompliances above that the required information is provided in the printed instructions and is prominently featured on the affected products, and there is no indication that the sizing issue affects consumers' ability to understand or appreciate the warnings.

We disagree with Baby Jogger that the smaller than required air bag warning label message area creates no risk to motor vehicle safety. The air bag warning labels are the agency's primary method for obtaining the consumer's attention and conveying important safety information with respect to the proper location to install a rear-facing child restraint. The agency believes that these air bag warning labels are necessary to make consumers aware of the potentially serious consequences of placing a rear-facing child seat or any child twelve and under on the front seat with an air bag, and that the rear seat is the safest place for these children. In NHTSA's occupant crash protection rule published on May 12, 2000,[5] the agency stated ". . . as with the current labels, manufacturers may provide translations of the required English language message as long as all the requirements for the English language are met, including size" [6] (emphasis added). Thus, the agency reconfirmed the importance of the message area requirement in the advanced air bag final rule.

The air bag warning label requirements in FMVSS No. 213, *Child Restraint Systems,* were established as part of a FMVSS No. 208, *Occupant Crash Protection,* final rule requiring new air bag warning labels in motor vehicles.[7] The intent of the final rule is that the warning or alert message fills the message area.[8] Not filling the message area would make purposeless the specification. The Baby Jogger label has a message area that is 22 percent below the required 30 square cm. This is a significant reduction in message area equivalent to not filling the message area.

The pictogram of the air bag warning label has a diameter that is 3 percent below the required 30 mm. Even though the pictogram minimum format is not met, NHTSA believes in this case that the consumer will have a message size that is acceptable.

d. Omitted Information

Baby Jogger notified the agency of the following four noncompliances related to missing information required in the printed instructions or electronic registration form in FMVSS No. 213:

(1) Paragraph S5.6.1.7 requires the printed instructions to include the statement in paragraph (ii) that "Child restraints could be recalled . . . or register on-line at (*insert Web site for electronic registration form*)." The printed instruction manual does not include the Web site address in the section regarding child restraint registration. Baby Jogger does not believe the noncompliance with paragraph S5.6.1.7 creates a risk to motor vehicle safety since on-line registration is optional.

The agency disagrees with Baby Jogger that the missing information for on-line registration does not create a risk to motor vehicle safety. While the manufacturer has the choice to provide on-line registration or not, if the manufacturer does provide the option for on-line registration then they are required to provide the Web site address in the section regarding child seat registration. The agency recognizes the importance of child restraint registrations. To support increasing the number of registrations, the agency is currently studying efforts to increase the rate of child restraint registrations so that in the event of a recall, all owners of affected units will be notified of a potentially unsafe product.

(2) Paragraph S5.6.3 requires the printed instructions to include the statement: "A snug strap should not allow any slack. It lies in a relatively straight line without sagging. It does not press on the child's flesh or push the child's body into an unnatural position." The printed instruction manual does not include this information. Baby Jogger does not believe that this noncompliance creates a risk to motor vehicle safety because the printed instructions provide adequate text to adjust the harness around the child including statements addressing snugness and sagging (see Baby Jogger's Petition in Docket NHTSA–2015–0074 for detail).

NHTSA disagrees with Baby Jogger that the provided text to address strap snugness in lieu of the required text is sufficient to replace the required text. The text provided by Baby Jogger contains additional information not related to strap snugness. In addition, the provided text fails to provide guidance to achieve a snug fit which may result in an improper securing of the child in the restraint and a compromise of the child seat's safety effectiveness in the event of a crash.

(3) Paragraph S8.1 requires the printed instructions to include a step-by-step procedure (including diagrams) for installing the system in aircraft passenger seats, securing a child in the system when it is installed in aircraft, and adjusting the system to fit the child. The printed instruction manual does not include instructions for installing the system in aircraft passenger seats. Baby Jogger does not believe that the missing aircraft installation information creates a risk to motor vehicle safety because the printed instructions address the installation of the child seat in a vehicle equipped with a lap belt only, which is similar to the installation of the child seat in an aircraft passenger seat with lap belt only. Baby Jogger believes that the installation instructions provided for a vehicle lap belt will be logically understood as the method to secure the child seat to the aircraft passenger seat.

NHTSA disagrees with Baby Jogger's line of reasoning. We have concerns that absent the required instructions specific to aircraft passenger installation, the user will be unprepared to properly secure the child restraint to the aircraft passenger seat, properly secure the child when it is installed in an aircraft, and properly adjust the system to fit the child. These potential improper procedures could result in a compromise of the child seat's safety effectiveness during flight.

(4) Paragraph S5.8.2(a)(1)(i) requires the electronic registration form to contain the statement "FOR YOUR CHILD'S CONTINUED SAFETY" at the top of the form. The electronic registration form on the Baby Jogger Web site did not include this statement at the top. Baby Jogger believes that users of child restraints have a basic understanding that recalls are conducted for safety reasons, and that one who navigated to the electronic registration form would not be

[5] 65 FR 30680.

[6] 65 FR 30722.

[7] 61 FR 60206; November 27, 1996.

[8] 61 FR 60206 at 60210.

dissuaded from registering due to the missing phrase.

The Agency agrees that a consumer who has navigated to the on-line registration will not be dissuaded from registering due to the missing phrase. Also, the Agency notes that Baby Jogger has corrected this omission on its on-line registration form and the required statement is present.

e. Spanish Language Type Size

Paragraph S5.5.2 of FMVSS No. 213 requires the information in the English language to be not smaller than 10 point type. An on-product warning label provided by Baby Jogger has the Spanish information at approximately 7 point type. The English language label is in full compliance with this requirement. Baby Jogger believes that the noncompliant text does not create a risk to motor vehicle safety because the information is clearly displayed on the affected child restraints and clearly communicates the required information.

NHTSA believes that the 7 point type text provided in the Spanish language label is not clearly displayed and is difficult to read. The smaller font size likely poses a challenge to the consumer's ability to read the text and could result in the consumer ignoring the text due to the difficulty in being able to read it. NHTSA disagrees with Baby Jogger's reasons for inconsequentiality as supported by the reasons stated above under the category "Information Type Size."

NHTSA's Decision: In consideration of the foregoing, NHTSA has determined that Baby Jogger has not met its burden of persuasion that the subject FMVSS No. 213 noncompliances are inconsequential to motor vehicle safety for: (a) Information Type Size/ Capitalization/Presentation order, (b) Background color (excluding the 10 percent tint noncompliance), (c) On-Product Label Message Area and Pictogram Sizes (excluding the pictogram noncompliance), (d) Omitted Information (excluding the missing statement at the top of the on-line registration form), and (e) Spanish Language Type Size. Accordingly, Baby Jogger's petition is hereby denied for these noncompliances and Baby Jogger is obligated to provide notification of, and free remedies for, the noncompliances as required under 49 U.S.C. 30118 and 30120.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliances identified above as "excluded" in its petition are inconsequential to motor vehicle safety: (b) minimum 10 percent tint on registration card, (c) minimum 30 mm diameter pictogram on air bag warning label, and (d) missing statement at the top of the on-line registration form. Accordingly, we grant its petition on these issues.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8).

Issued on: August 2, 2016.

Stephen A. Ridella,

Acting Associate Administrator for Enforcement.

[FR Doc. 2016–18770 Filed 8–8–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of five individuals and six entities whose property and interests in property have been unblocked pursuant to the Foreign Narcotics Kingpin Designation Act (Kingpin Act). Additionally, OFAC is publishing an update to the identifying information of one individual currently included in the list of Specially Designated Nationals and Blocked Persons (SDN List).

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (SDN List) of the individuals and entities identified in this notice whose property and interests in property were blocked pursuant to the Kingpin Act, is effective on August 4, 2016. Additionally, the update to the SDN List of the identifying information of the individual identified in this notice is also effective on August 4, 2016.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site at (*www.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on demand service at (202) 622–0077.

Background

On December 3, 1999, the Kingpin Act (21 U.S.C. Sections 1901–1908, 8 U.S.C. Section 1182) was signed into law by the President of the United States. The Kingpin Act provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and to the benefits of trade and transactions involving U.S. persons and entities.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President or the Secretary of the Treasury. In addition, the Secretary of the Treasury consults with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security when designating and blocking the property or interests in property, subject to U.S. jurisdiction, of persons or entities found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; and/or (3) playing a significant role in international narcotics trafficking.

On August 4, 2016, the Associate Director of OFAC's Office of Global Targeting removed from the SDN List the individuals and entities listed below, whose property and interests in property was blocked pursuant to the Kingpin Act.

Individuals

1. GARCIA AYALA, Filemon, C Constitucion # 32, Col Rio Grande, Rio Grande, Zacatecas 98400, Mexico; Matamoros, Tamaulipas, Mexico; Rio Grande, Zacatecas, Mexico; DOB 28 Oct 1948; alt. DOB 26 Oct 1948; alt. DOB 27 Oct 1948; POB Loreto, Zacatecas, Mexico; Passport 160010455 (Mexico) issued 03 May 2002 expires 03 May 2012; C.U.R.P. GAAF481027HZSRYL07 (Mexico); alt. C.U.R.P. GAAF481026HTSRYL08 (Mexico) (individual) [SDNTK].

2. JAN, Haji Mohammad (a.k.a. BIN KUL MOHAMMED, Mohammad Jan), c/o CONNECT TELECOM GENERAL TRADING LLC, Dubai, United Arab Emirates; c/o GREEN LEAF GENERAL TRADING LLC, Dubai, United Arab Emirates; DOB 07 Oct 1969; alt. DOB 1968; POB Kandahar, Afghanistan; citizen Afghanistan; National ID No. 1090876 (Afghanistan) (individual) [SDNTK].
3. RAMIREZ BONILLA, Gloria Ines, c/o C.I. STONES AND BYPRODUCTS TRADING S.A., Bogota, Colombia; c/o C.I. AGROINDUSTRIAL DE MATERIAS PRIMAS ORGANICAS LTDA, Bogota, Colombia; c/o JUAN SEBASTIAN Y CAMILA ANDREA JIMENEZ RAMIREZ Y CIA S.C.S., Bogota, Colombia; DOB 28 Jan 1969; citizen Colombia; Cedula No. 65552011 (Colombia) (individual) [SDNTK].
4. RUBIO ZAGA, Jesus Roman, c/o ILC EXPORTACIONES, S. DE R.L. DE C.V., Mexico, Distrito Federal, Mexico; DOB 28 Aug 1973; POB Coyoacan, Distrito Federal, Mexico; nationality Mexico; citizen Mexico; C.U.R.P. RUZJ730828HDFBGS08 (Mexico) (individual) [SDNTK].
5. RUIZ MADRID, Adriana Maria; DOB 14 Dec 1968; POB Envigado, Antioquia, Colombia; citizen Colombia; Cedula No. 42897418 (Colombia) (individual) [SDNTK] (Linked To: CARYTES ENCANTO Y BELLEZA).

Entities

1. CARYTES ENCANTO Y BELLEZA, Calle 6AS 43 A LC 3188, Medellin, Colombia; Centro Comercial Oviedo, Local 3188, El Poblado, Medellin, Colombia; Matricula Mercantil No 40551702 (Medellin) [SDNTK].
2. INTERNACIONAL & NACIONAL EXCHANGE SERVICES, INC., Pharr, TX, United States; Business Registration Document # 801199276 (Texas); Tax ID No. 32040757414 [SDNTK].
3. PRODIRA CASA DE CAMBIO, ACTIVIDAD AUXILIAR DEL CREDITO S.A. DE C.V., Blvd. La Florida 3–A, Colonia La Florida, Guadalupe, Zacatecas 98618, Mexico; R.F.C. PCC031010989 (Mexico) issued 18 Dec 2003 [SDNTK].
4. PRODIRA S.A. DE C.V., CASA DE CAMBIO, ACTIVIDAD DEL CREDITO (a.k.a. PRODIRA CASA DE CAMBIO INCORPORATED), Pharr, TX, United States; Business Registration Document # 801041970 (Texas); Tax ID No. 32038179357 [SDNTK].
5. PRODIRA, INC., Aurora, CO, United States; Phoenix, AZ, United States; Des Moines, IA, United States; Pharr, TX, United States; Business Registration Document # F–853615–0 (Arizona); alt. Business Registration Document # 20011210699 (Colorado); alt. Business Registration Document # 335187 (Iowa); alt. Business Registration Document # 148693800 (Texas); Tax ID No. 17428803666 [SDNTK].
6. TRASTREVA S.A. DE C.V., Av. La Florida 3, La Florida, Guadalupe, Zacatecas 98610, Mexico; Cedula No. DLC/P/152/2011 (Mexico); R.F.C. TRA0010109E4 (Mexico) [SDNTK].

Additionally, on August 4, 2016, the Associate Director of OFAC's Office of Global Targeting updated the SDN List for one individual listed below, whose property and interests in property continue to be blocked pursuant to the Kingpin Act.

Individual

LEAL GARCIA, Ignacio (a.k.a. "CAMILO"; a.k.a. "TUERTO"); nationality Colombia; citizen Colombia; Cedula No. 96186610 (Colombia) (individual) [SDNTK].

—to—

LEAL GARCIA, Ignacio (a.k.a. "CAMILO"; a.k.a. "TUERTO"); DOB 26 Jul 1969; nationality Colombia; citizen Colombia; Cedula No. 96186610 (Colombia) (individual) [SDNTK].

Dated: August 4, 2016.

Gregory T. Gatjanis,

Associate Director, Office of Global Targeting, Office of Foreign Assets Control.

[FR Doc. 2016–18844 Filed 8–8–16; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons, Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of four individuals whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, "Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers".

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (SDN List) of the four individuals identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on August 4, 2016.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site at (*www.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on demand service at (202) 622–0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (IEEPA), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the Order). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The foreign persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and the Secretary of State: (a) To play a significant role in international narcotics trafficking centered in Colombia; or (b) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On August 4, 2016, the Associate Director of OFAC's Office of Global Targeting removed from the SDN List the individuals listed below, whose property and interests in property were blocked pursuant to the Order:

Individuals

1. CAICEDO VERGARA, Nohemy (a.k.a. CAICEDO VERGARA, Nohemi), Km. 4 El Pinal, Buenaventura, Colombia; c/o INDUSTRIA DE PESCA SOBRE EL PACIFICO S.A., Buenaventura, Colombia; Cedula No. 31375185 (Colombia) (individual) [SDNT].
2. CARRILLO LUNA, Andres Felipe, c/o ADMINISTRADORA GANADERA EL 45 LTDA., Medellin, Colombia; c/o CASA DEL GANADERO S.A., Medellin, Colombia; c/o GANADERIA LUNA HERMANOS LTDA., Medellin, Colombia; c/o INVERSIONES EL MOMENTO S.A., Medellin, Colombia; c/o SOCIEDAD MINERA GRIFOS S.A., El Bagre, Antioquia, Colombia; Calle 10C No. 25–41, Medellin, Colombia; Carrera 78A No. 33A–76, Medellin, Colombia; 801 Brickell Key Blvd., unit 1907, Miami, FL 33131, United States; DOB 25 May 1986; alt. DOB 24 May 1986; POB Puerto Asis, Putumayo, Colombia; Cedula No. 1037572288 (Colombia); Passport AJ723916 (Colombia); alt. Passport RC10058210 (Colombia) (individual) [SDNT].
3. CARRILLO LUNA, Paula Andrea, c/o ADMINISTRADORA GANADERA EL 45 LTDA., Medellin, Colombia; c/o CASA DEL GANADERO S.A., Medellin, Colombia; c/o GANADERIA LUNA HERMANOS LTDA., Medellin, Colombia; c/o INVERSIONES EL MOMENTO S.A., Medellin, Colombia; c/o SOCIEDAD MINERA GRIFOS S.A., El Bagre, Antioquia, Colombia; Carrera 78A No. 33A–76, Medellin, Colombia; 13315 SW 128 Passage, Miami, FL 33186, United States; DOB 25 Dec 1983; POB Puerto Asis, Putumayo, Colombia; Cedula No. 32244809 (Colombia); Passport AJ775569 (Colombia) (individual) [SDNT].
4. TREJOS AGUILAR, Sonia, Carrera 8 No. 6–37, Zarzal, Valle del Cauca, Colombia; Cali, Colombia; c/o AGROINVERSORA URDINOLA HENAO Y CIA. S.C.S., Cali, Colombia; c/o EXPLOTACIONES AGRICOLAS Y GANADERAS LA LORENA S.C.S., Cali, Colombia; c/o INDUSTRIAS AGROPECUARIAS DEL VALLE LTDA., Cali, Colombia; c/o INVERSIONES EL EDEN S.C.S., Cali, Colombia; Cedula No. 66675927 (Colombia) (individual) [SDNT].

Dated: August 4, 2016.

Gregory T. Gatjanis

Associate Director, Office of Global Targeting, Office of Foreign Assets Control.

[FR Doc. 2016–18845 Filed 8–8–16; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

Geriatrics and Gerontology Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that a meeting of the Geriatrics and Gerontology Advisory Committee will be held on August 30–31, 2016, in Room 630 at the Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC. On August 30, the session will begin at 8:30 a.m. and end at 5:00 p.m. On August 31, the session will begin at 8:00 a.m. and end at 12:00 p.m. This meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary of VA and the Under Secretary for Health on all matters pertaining to geriatrics and gerontology. The Committee assesses the capability of VA health care facilities and programs to meet the medical, psychological, and social needs of older Veterans and evaluates VA programs designated as Geriatric Research, Education, and Clinical Centers.

The meeting will feature presentations and discussions on VA's geriatrics and extended care programs, aging research activities, updates on VA's employee staff working in the area of geriatrics (to include training, recruitment and retention approaches), Veterans Health Administration (VHA) strategic planning activities in geriatrics and extended care, recent VHA efforts regarding dementia and program advances in palliative care, and performance and oversight of VA Geriatric Research, Education, and Clinical Centers.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested parties should provide written comments for review by the Committee to Mrs. Marcia Holt-Delaney, Program Analyst, Geriatrics and Extended Care Services (10P4G), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, or via email at *Marcia.Holt-Delaney@va.gov*. Because the meeting is being held in a government building, a photo I.D. must be presented at the Guard's Desk as a part of the clearance process. Due to an increase in security protocols, and in order to prevent delays in clearance processing, you should allow an additional 30 minutes before the meeting begins. Individuals who wish to attend the meeting should contact Mrs. Holt-Delaney at (202) 461–6769.

Dated: August 4, 2016.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2016–18875 Filed 8–8–16; 8:45 am]

BILLING CODE P

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Federal Register

Vol. 81, No. 153

Tuesday, August 9, 2016

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